



# Political Status of Puerto Rico: Options for Congress

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## Summary

The United States acquired the islands of Puerto Rico in 1898 after the Spanish-American War. In 1950, Congress enacted legislation (P.L. 81-600) authorizing Puerto Rico to hold a constitutional convention and in 1952, the people of Puerto Rico ratified a constitution establishing a republican form of government for the island. After being approved by Congress and the President in July 1952 and thus given force under federal law (P.L. 82-447), the new constitution went into effect on July 25, 1952.

Puerto Rico is subject to congressional jurisdiction under the Territorial Clause of the U.S. Constitution. Over the past century, Congress passed legislation governing Puerto Rico's relationship with the United States. For example, residents of Puerto Rico hold U.S. citizenship, serve in the military, are subject to federal laws, and are represented in the House of Representatives by a Resident Commissioner elected to a four-year term. Although residents participate in the presidential nominating process, they do not vote in the general election. Puerto Ricans pay federal tax on income derived from sources in the mainland United States, but they pay no federal tax on income earned in Puerto Rico. The Resident Commissioner may vote in committees but is not permitted to vote in, or preside over, either the Committee of the Whole or the House in the 112<sup>th</sup> Congress.

Elements of the U.S.-Puerto Rico relationship have been and continue to be matters of debate. Some contend that the current political status of Puerto Rico, perhaps with enhancements, remains a viable option. Others argue that commonwealth status is or should be only a temporary fix to be resolved in favor of other solutions considered permanent, non-colonial, and non-territorial. Some contend that if independence is achieved, the close relationship with the United States could be continued through compact negotiations with the federal government. One element apparently shared by all involved is that the people of Puerto Rico seek to attain full, democratic representation, notably through voting rights on national legislation to which they are subject.

In March 2011, the President's Task Force on Puerto Rico Status issued its latest report. The Task Force, whose members include various officials in the Obama Administration, agreed with its predecessors that the status quo, statehood, independence, or free association with the United States remain constitutionally viable options if Congress and the people of Puerto Rico wish to revisit the island's political status. The task force report might spur a legislative response in Washington or San Juan. As of this writing, however, the most recent major congressional activity on status occurred during the 111<sup>th</sup> Congress.

On April 29, 2010, for the first time since 1998, the House approved (223-169) status-related legislation for Puerto Rico. H.R. 2499 (Pierluisi) would have authorized a two-stage plebiscite in Puerto Rico to reconsider the status issue. On May 19, 2010, the Senate Energy and Natural Resources Committee held a hearing on H.R. 2499. No additional action occurred on the bill. Although a change in Puerto Rico's status would require legislative action in Congress, holding plebiscites or otherwise revisiting the issue could be initiated in San Juan or Washington.

This report will be updated periodically as events warrant.

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**D**evelopments in San Juan, Puerto Rico, as well as in Congress, have signaled renewed interest in the relationship of the Commonwealth of Puerto Rico to the United States. Legislation before Congress would, if enacted, establish a process intended to provide Members with information on the status preference of the voters in Puerto Rico and on the mainland. Legislative action would be required to modify the existing political status of Puerto Rico.

## **Recent Developments**

### **112<sup>th</sup> Congress**

As of this writing, no major legislative activity regarding Puerto Rico's political status has occurred in the 112<sup>th</sup> Congress.

### **111<sup>th</sup> Congress**

H.R. 2499 (Pierluisi) proposed that two plebiscites be held in Puerto Rico to enable eligible voters to consider the current political status of the commonwealth. The government of Puerto Rico would have been responsible for the costs associated with the plebiscites. Voting would have taken place pursuant to the rules of the local elections commission; the results would have had to be certified to the President and both chambers of Congress. The bill did not mandate that the plebiscites be held and did not include requirements for further congressional action. Consideration of the bill followed decades of intermittent debate in Congress on the topic, the release of White House reports on status in recent years, and current support from the current Resident Commissioner, the governor of Puerto Rico, and the Puerto Rico legislature.

### **Senate Committee on Energy and Natural Resources Action on H.R. 2499**

On May 19, 2010, the Senate Committee on Energy and Natural Resources held a hearing on H.R. 2499 as approved by the House in the previous month. Leaders of the three major political parties testified, representing the interests of statehood, Commonwealth, and independence advocates. Much of the discussion centered on whether and how the status options might be presented to the people of Puerto Rico before the plebiscite would be scheduled, as well as on the perceived role of Congress in furthering resolution of the status issue. Governor Fortuño of Puerto Rico, a supporter of H.R. 2499, indicated that, as amended by the House, the two-step plebiscite process in H.R. 2499 could be reduced to one that presents the four status options to the voters.

### **House Passage**

On April 29, 2010, the House approved an amended version of H.R. 2499, the Puerto Rico Democracy Act of 2010, by a final vote of 223-169. As passed, the bill authorized the government of Puerto Rico to conduct two plebiscites.<sup>1</sup> In the first plebiscite, eligible voters would have been

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<sup>1</sup> A plebiscite is a popular vote held to determine the degree to which eligible voters support or oppose a proposed change in a form of government. An amendment that would have replaced the process as reported from committee with (continued...)

asked to choose between two options: (1) Puerto Rico continuing “its present form of political status” or (2) “a different political status.”<sup>2</sup> If a majority of voters chose to maintain the status quo, the government of Puerto Rico would have been authorized to conduct additional plebiscites, using the same ballot options, every eight years to reassess the voters’ preferences on status. If, however, a majority supported the second option, another plebiscite would have been authorized. Voters would have then been asked to select their preference for one of four options: (1) independence, (2) “sovereignty in association with the United States,” (3) statehood, and (4) the existing form of political status, “Commonwealth.”<sup>3</sup> In addition to any regulations and procedures established by the Puerto Rico State Elections Commission that provide for the printing of ballots in Spanish and English (the two official languages of Puerto Rico), the amended bill required that the plebiscite ballots be printed in English.<sup>4</sup> The Puerto Rico State Elections Commission would have also, according to an amendment adopted on the floor of the House, notified voters that under continuation of the current status or statehood, federal “official language requirements” would apply to Puerto Rico and throughout the United States. The Commission also would be required to notify voters that it is the sense of Congress that the teaching of English be promoted in public schools in Puerto Rico.<sup>5</sup>

## **House Committee on Natural Resources Action on H.R. 2499**

Preceding the House vote, the House Committee on Natural Resources held a hearing on H.R. 2499 on June 24, 2009, and held a markup on July 22, 2009. At the markup, an amended version of the bill was ordered to be reported favorably (by a vote of 30-8). The amended version of the bill retained the provisions of the original bill and added two components—one requiring Puerto Rico to cover all expenses associated with the plebiscites, and another requiring that plebiscite ballots be made available in English. The committee reported the legislation on October 8, 2009 (H.Rept. 111-294), and it was placed on the Union Calendar the same day.

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(...continued)

a sense of Congress provision on whether the voters wished to conduct a plebiscite was defeated. See Rep. Nydia Velazquez, “Puerto Rico Democracy Act of 2010,” House Debate, *Congressional Record*, vol. 156 (April 29, 2010), p. H3050. Another amendment that would have recognized the right of the government of Puerto Rico to hold a plebiscite was withdrawn by the sponsor. See Rep. Doc Hastings, “Puerto Rico Democracy Act of 2010,” House Debate, *Congressional Record*, vol. 156 (April 29, 2010), p. H3051.

<sup>2</sup> The bill defines eligible voters as those covered by the electoral laws of Puerto Rico and all U.S. citizens born in Puerto Rico who meet the requirements set forth by the Puerto Rico Elections Commission. Eligible voters may request an absentee ballot. Under this definition, Puerto Ricans on the island and on the mainland would be eligible to participate in the plebiscites. An amendment that would have added additional criteria to allow persons living outside Puerto Rico to vote in the plebiscites was defeated. See Rep. Nydia Velazquez, “Puerto Rico Democracy Act of 2010,” House Debate, *Congressional Record*, vol. 156 (April 29, 2010), p. H3047.

<sup>3</sup> The House agreed to add the fourth option of “Commonwealth” in an amendment considered during the floor debate. See Rep. Virginia Foxx, “Puerto Rico Democracy Act of 2010,” House Debate, *Congressional Record*, vol. 156 (April 29, 2010), p. H3041. Related amendments that would have added other options to and modified the proposed plebiscite process were defeated. See Rep. Luis Gutierrez, “Puerto Rico Democracy Act of 2010,” House Debate, *Congressional Record*, vol. 156 (April 29, 2010), p. H3043; and Rep. Nydia Velazquez, “Puerto Rico Democracy Act of 2010,” House Debate, *Congressional Record*, vol. 156 (April 29, 2010), p. H3048.

<sup>4</sup> A related amendment that would have required that the ballots be printed in Spanish was defeated. See Rep. Luis Gutierrez, “Puerto Rico Democracy Act of 2010,” House Debate, *Congressional Record*, vol. 156 (April 29, 2010), p. H3044.

<sup>5</sup> See Rep. Dan Burton, “Puerto Rico Democracy Act of 2010,” House Debate, *Congressional Record*, vol. 156 (April 29, 2010), p. H3045.

## **Issue Discussion in Brief**

Several issues were debated during the 111<sup>th</sup> Congress’s consideration of H.R. 2499. Previous versions of this report, issued when the bill was actively under consideration, contained additional discussion. This section briefly recaps major components of the debate.

As introduced, reported out of committee, and approved by the House, H.R. 2499 would not have, in and of itself, resolved the political status debate. Congress would have had to consider other legislation, or significantly amend H.R. 2499, in order to change Puerto Rico’s status. Congress could have chosen to authorize a plebiscite or some other process to reconsider Puerto Rico’s political status, if it chose to do so. Whether in the 111<sup>th</sup> Congress or now, as it has done in the past, the Puerto Rican government could have taken the initiative to reconsider its political status through a plebiscite or referendum on local legislation without congressional action. Also, because the Territorial Clause of the U.S. Constitution grants Congress broad authority over territories, Congress could have initiated a change in the status through enactment of H.R. 2499 or by undertaking other steps.

### ***The Process of Determining the Status Preference***

One of the key issues under debate concerned how the status question should have been brought before the people of Puerto Rico for reconsideration. H.R. 2499 proposed to take the question directly to voters in plebiscites. Supporters of the legislation contended that this approach was the best method for addressing the status issue because it sets forth the options likely to be constitutionally valid and acceptable to Congress. Plebiscites necessarily include pre-determined questions and answers (i.e., only the options listed on the ballot). Others advocated an alternative approach; most recently, H.R. 1230 (Velázquez) in the 110<sup>th</sup> Congress would have authorized establishment of a constitutional convention without preconditions on the issues to be considered or the options to be proposed. The plebiscite approach arguably is a more efficient way to ascertain the electorate’s views on specific questions, but plebiscites do not allow for modification of the questions presented. By contrast, conventions have the potential advantage of allowing for wide-ranging debate and consideration of alternatives. Convention delegates are elected to represent popular will and might or might not be able to reach a politically viable or constitutionally valid status choice.<sup>6</sup>

### ***Plebiscite Participation***

Under H.R. 2499, “all United States citizens born in Puerto Rico” who meet eligibility requirements, but not necessarily living there at the time of the plebiscites, would be eligible to participate.<sup>7</sup> This approach was substantially similar to the one proposed in H.R. 900 (Serrano) in the 110<sup>th</sup> Congress. Allowing non-residents to vote outside their current jurisdiction of residence is not typical in U.S. elections, but this aspect of the proposal would have provided an

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<sup>6</sup> The full House considered a third option during the debate on H.R. 2499. Amendment No. 7 to H.R. 2499, rejected on the floor of the House on April 29, 2010, would have established as a sense of Congress that the plebiscite would allow the voters to decide whether a plebiscite on the status issue would be conducted. This, according to the sponsor, would have allowed the voters “to submit their own proposal for moving forward.” See Rep. Nydia Velazquez, “Puerto Rico Democracy Act of 2010,” House Debate, *Congressional Record*, vol. 156 (April 29, 2010), p. H3050.

<sup>7</sup> H.R. 2499, Sec. 3.

opportunity for the substantial Puerto Rican population living elsewhere (assuming they were born in Puerto Rico and remain U.S. citizens) to participate in the vote.

### ***The “Sovereignty in Association” Status Option***

The first and third status options in the second plebiscite—*independence* and *statehood*, respectively—were straightforward. The fourth option, continuation of the current status of commonwealth, was subject to debate (and could be in the future), as discussed below. The second option uses terminology that is not necessarily widely recognized in discussions of political status. The proposed ballot language read:

Sovereignty in Association with the United States: Puerto Rico and the United States should form a political association between sovereign nations that will not be subject to the Territorial Clause of the United States Constitution.

“Sovereignty in association with the United States” is not a term of art typically used in status discussions and might not be widely recognized. During consideration of the bill in the House, proponents explained their view of the language, described immediately below. Others might have contended, however, that the meaning of the second option is less than clear, and could be interpreted by some as a reference to an option described as “enhanced Commonwealth,” an option that task force reports have consistently rejected as viable options.

## **110<sup>th</sup> Congress**

In the 110<sup>th</sup> Congress, two House bills and one Senate bill addressing Puerto Rico’s political status were introduced. As with bills introduced in the 109<sup>th</sup> Congress, the House legislation (H.R. 900 and H.R. 1230) originally offered two alternatives for addressing Puerto Rico’s political status: plebiscites (popular votes) or a constitutional convention. During March and April 2007, the House Subcommittee on Insular Affairs held hearings on the two bills; the House Natural Resources Committee marked up H.R. 900 in October 2007. It was reported favorably. The Senate bill (S. 1936) proposed a third option, a plebiscite, but in a different format and with different options, than proposed by H.R. 900. No action beyond introduction occurred on the Senate bill. This section summarizes the legislation considered in the 110<sup>th</sup> Congress.

### **The Two House Bills Prior to Committee Markup**

On February 7, 2007, Representative Serrano introduced H.R. 900, which, as originally introduced, would have authorized two plebiscites in Puerto Rico. The first plebiscite, to have been conducted “not later than December 31, 2009,” would have asked voters to choose between two options: (1) continuing “the existing form of territorial status as defined by the Constitution, basic laws, and policies of the United States,” or (2) pursuit of “a path toward a constitutionally viable permanent nonterritorial status.”<sup>8</sup> If the majority of voters approved a change, the second plebiscite would have determined whether independence (including free association, discussed later in this report) or statehood was preferred. As introduced, H.R. 900 would have allowed U.S. citizens born in Puerto Rico, but not necessarily living there today, to participate in the plebiscites. Voter eligibility would be determined by the Puerto Rico State Elections Commission.

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<sup>8</sup> H.R. 900, sec. 3.

Representative Velázquez introduced H.R. 1230 on February 28, 2007. H.R. 1230 proposed a constitutional convention and referendum to consider status. First, the bill proposed a constitutional convention, to be held in Puerto Rico, to consider three options: (1) “a new or modified Commonwealth status,” (2) statehood, or (3) independence. The convention, charged with formulating a “self-determination option” (proposal), would have had to be “based on the sovereignty of the People of Puerto Rico and not subject to the plenary powers of the territory clause of the Constitution of the United States.”<sup>9</sup> The convention’s proposal would have then been presented to “the People of Puerto Rico” (who would also have elected the convention delegates) in a referendum. If a majority of voters had approved the proposal, the legislation directed that Congress “shall” enact a joint resolution approving the proposal. Any congressional changes to the proposal would have been submitted to Puerto Rican voters for another referendum before the provisions took effect. The legislation specified that voters participating in the referenda could have included resident Puerto Ricans and non-residents “who are not legal residents of the Commonwealth of Puerto Rico and who are either born in Puerto Rico or have one parent born in Puerto Rico.”<sup>10</sup>

### **The October 2007 House Natural Resources Committee Markup**

On October 23, 2007, the House Natural Resources Committee marked up H.R. 900. During that session, portions of the original versions of H.R. 900 and H.R. 1230 were combined in the reported version of H.R. 900, which was sent favorably to the full House by voice vote. (The written report, H.Rept. 110-597, was not issued until April 2008.) Unlike the original version of H.R. 900, which called for two plebiscites (but only if voters in the first plebiscite chose a change in status), an amendment in the nature of a substitute to H.R. 900 reported by the full committee proposed only one plebiscite, in which voters would have considered whether Puerto Rico should have pursued the status quo or another political relationship with the United States. Also, the reported version of H.R. 900 modified the threshold question. In the original version of the bill, the status quo was described as “the existing form of territorial status *as defined by the Constitution, basic laws, and policies of the United States.*”<sup>11</sup> By contrast, the reported version framed the status quo as Puerto Rico “continu[ing] to have its *present form of territorial status and relationship with the United States.*”<sup>12</sup> As with the original version of the bill, the reported version of H.R. 900 would have framed the second political status option in the first plebiscite as pursuing “constitutionally viable permanent nonterritorial status.”<sup>13</sup>

The original and reported versions of H.R. 900 also proposed different steps following the initial plebiscite. Chairman Rahall’s amendment in the nature of a substitute would have required the President’s Task Force on Puerto Rico Status (discussed below) to “submit recommendations for appropriate action” to Congress if voters in the initial plebiscite had chosen a political relationship different from commonwealth (the non-status quo option).<sup>14</sup> However, the committee adopted an amendment, sponsored by Representative Christensen, to the Rahall language. The

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<sup>9</sup> H.R. 1230, sec. 2.

<sup>10</sup> H.R. 1230, sec. 2.

<sup>11</sup> H.R. 900 as originally introduced, Sec. 3. Emphasis added.

<sup>12</sup> H.R. 900 amendment in the nature of a substitute (Rahall), reported October 23, 2007, Sec. 2. Emphasis added.

<sup>13</sup> H.R. 900 as originally introduced, Sec. 3 and *ibid*, respectively. There are nonetheless slight wording and punctuation differences in the text surrounding the cited passage in each version of the bill.

<sup>14</sup> H.R. 900 amendment in the nature of a substitute (Rahall), reported October 23, 2007, Sec. 2.

Christensen amendment would have incorporated into H.R. 900 language taken from H.R. 1230. Under the Christensen amendment, if a majority of voters chose a change in political status in the first plebiscite, Congress would have recognized “the inherent authority of the People of Puerto Rico” to either call a constitutional convention or conduct another plebiscite. Other elements of the original and reported versions of H.R. 900 (e.g., those addressing voter eligibility) were similar or identical.

To summarize, the House Natural Resources Committee reported favorably H.R. 900, as amended, by voice vote. The reported version of the bill contained elements from the original versions of H.R. 900 and H.R. 1230. Most notably, the reported version of the bill would have required the Puerto Rico State Elections Commission to hold a plebiscite on Puerto Rico status by December 31, 2009. In that plebiscite, voters would have chosen between the status quo and a “constitutionally viable permanent non-territorial status.” If voters chose the latter option (per the Christensen amendment), the “People of Puerto Rico” could either have called a constitutional convention or held a second plebiscite to consider how to proceed. In either case, Congress would have had final say over the island’s status. Although the reported version of H.R. 900 represented a compromise (generally supported at the markup) between the approaches originally proposed in H.R. 900 and H.R. 1230, some Members continued to have reservations. For example, Representative Velázquez, sponsor of H.R. 1230, called the reported bill insufficiently democratic and transparent.<sup>15</sup> On the other hand, Representative Fortuño, a co-sponsor of H.R. 900, generally characterized the reported version of the bill as less than ideal, but ultimately a positive step in the status debate.

## The Senate Bill

Senator Salazar introduced S. 1936 on August 2, 2007. The bill (which shared the “Puerto Rico Democracy Act of 2007” title with H.R. 900, but differed substantially from that bill), proposed a single plebiscite in which voters would have chosen from four status options on one ballot. S. 1936 proposed that by September 30, 2008, the Puerto Rico State Elections Commission conduct a plebiscite in which voters would choose between the status quo, independence, free association, or statehood. As with the House bills, ballot language and the placement of various options on the ballot could have affected the results. The status quo, described as a continuation of Puerto Rico’s “present status and relationship with the United States,” would have been listed first. Independence would have been listed second; no definition of “independence” was provided. Free association would have been listed third and described as “seek[ing] nationhood in free association with the United States.” Finally, statehood (without additional definition), would have been listed fourth.<sup>16</sup> No committee activity occurred on S. 1936.

## Comparing the Reported H.R. 900 and S. 1936

Both the reported version of H.R. 900 and S. 1936 as introduced proposed a reconsideration of the Puerto Rico status issue through a popular vote. Whereas S. 1936 presented four status options as distinct choices, the reported version of H.R. 900 simply asked voters to choose between the status quo and a change in political status. Although the House bill did not specify

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<sup>15</sup> Honorable Nydia M. Velázquez, “Velázquez Criticizes Committee Approval of Puerto Rico Bill,” press release, October 23, 2007.

<sup>16</sup> S. 1936, sec. 3.

status options if voters chose a change, reports by a presidential task force (discussed below) determined that constitutional status options were limited to the status quo, independence (including free association), or statehood. As is noted below, the conclusions reached by the task force have been controversial. The two bills also differed regarding voter-eligibility requirements, funding, and other administrative provisions.

## **109<sup>th</sup> Congress**

Bills introduced in the 109<sup>th</sup> Congress were largely similar to the bills introduced in the 110<sup>th</sup> Congress. Four bills addressing Puerto Rico's political status were introduced during the 109<sup>th</sup> Congress. These bills also offered two different approaches to the political status issue. On February 16, 2006, Senator Burr introduced legislation (S. 2304) that recognized the right of the government of Puerto Rico to call a constitutional convention and authorized such action. According to the legislation, delegates would have considered three proposals that could have been submitted to Congress: (1) development of a new "compact of association" with the United States; (2) admission of Puerto Rico as the 51<sup>st</sup> state, or (3) establishment of an independent nation. The convention's proposal would then have been presented to Congress. If approved, Puerto Ricans would have voted on the proposal in a referendum. Representative Duncan introduced an identical bill (H.R. 4963) in the House on March 15, 2006. S. 2304 and H.R. 4963 were similar to H.R. 1230, introduced in the 110<sup>th</sup> Congress, although there are some differences between the 110<sup>th</sup> and 109<sup>th</sup> Congress bills. For example, H.R. 1230 places the popular referendum *before* congressional approval of the convention proposal, whereas S. 2304 and H.R. 4963 called for the referendum to be held *after* congressional approval of the convention's proposal.

On March 2, 2006, Representative Fortuño, Resident Commissioner for Puerto Rico, introduced legislation (H.R. 4867) to authorize two status plebiscites in Puerto Rico. This legislation is essentially the same as H.R. 900, introduced by Representative Serrano during the 110<sup>th</sup> Congress. Representatives Fortuño and Serrano were co-sponsors of H.R. 4867.

On April 26, 2006, Senator Martinez introduced S. 2661, which also proposed a plebiscite, but differed significantly from H.R. 4867. S. 2661 proposed only one plebiscite, in which voters would have been presented with two choices: continued status "as a territory of the United States," or pursuit of "a path toward permanent nonterritorial status." The bill did not specify what would have constituted "permanent nonterritorial status."

On November 15, 2006, the Senate Energy and Natural Resources Committee held a hearing on the 2005 report from the President's Task Force on Puerto Rico's Status. Witnesses at the hearing noted continued disagreement in Washington and Puerto Rico about Puerto Rico's current and future political status. Various Senators and witnesses also debated whether Puerto Rico's political status should be revisited, and if so, which of the legislative options, if any, proposed during the 109<sup>th</sup> Congress should be followed. The 109<sup>th</sup> Congress took no additional action on Puerto Rican political status.

## Non-Congressional Developments

A catalyst for the legislative activity described above was the release in December 2005 of a presidential task force report.<sup>17</sup> In the report, the task force asserted unambiguously that Puerto Rico, although styled a “commonwealth,” is a territory of the United States and is subject to Congress under the Territorial Clause of the U. S. Constitution.<sup>18</sup> It also asserted that the Constitution recognizes only two non-territorial options for Puerto Rico: either incorporation as a state into the Union or independence. The task force recommended that the people of Puerto Rico be given the opportunity through a plebiscite to say whether they want to continue their territorial status. Were Puerto Ricans to reject territorial status, the task force recommended a second plebiscite through which Puerto Ricans would choose between the two constitutionally viable options of statehood and independence. The task force recommendations were rejected by the governor of Puerto Rico at the time, who condemned the report and rejected “any efforts to turn the task force’s recommendations into Congressional legislation.”<sup>19</sup> The governor, among others, argued that the “Commonwealth” or, in some cases, “Enhanced Commonwealth” constructs were legitimate non-territorial options under U. S. constitutional and statutory law. The current governor, former Resident Commissioner Fortuño, supports the conclusions of the report.

In San Juan, during March and April 2005, the Puerto Rican Legislative Assembly debated and approved a bill “demanding” that the President and Congress “express their commitment to respond” to calls to resolve the issues of the political status of Puerto Rico.<sup>20</sup> The governor vetoed the bill, which vitiated the bill’s authorization for a referendum to be held on July 10, 2005. Subsequently, the Legislative Assembly approved a concurrent resolution that petitioned Congress and the President to establish a method by which the citizens of Puerto Rico could select a relationship with the United States “from among fully democratic, non-territorial and non-colonial alternatives.”<sup>21</sup> On August 2006, delegates to Puerto Rico’s New Progressive Party (NPP) convention adopted a resolution (dubbed the “Tennessee Plan” for the method by which Tennessee and six other states joined the Union; discussed briefly later in this report), reportedly calling for Puerto Ricans to initiate a statehood application rather than waiting for an invitation

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<sup>17</sup> U.S. President’s Task Force on Puerto Rico’s Status, *Report by the President’s Task Force on Puerto Rico’s Status* (Washington: December 2005). The task force was created by President Clinton (E.O. 13183, dated December 23, 2000) and reconfigured by President Bush (E.O. 13209, dated April 30, 2001, and E.O. 13319, dated December 3, 2003). The task force was to “ensure official attention to and facilitate action on” status proposals and advise the President and Congress on such matters. In 2007 the Task Force issued a new version of the report which reiterated the conclusions reached in 2005. See U.S. President’s Task Force on Puerto Rico’s Status, *Report by the President’s Task Force on Puerto Rico’s Status* (Washington: December 2007), available at <http://www.usdoj.gov/opa/documents/2007-report-by-the-president-task-force-on-puerto-rico-status.pdf>.

<sup>18</sup> “The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.” U.S. Const., Art. IV, Sec. 3, cl. 2.

<sup>19</sup> Letter from Governor Aníbal Acevedo Vilá, January 24, 2006, no longer available on the Internet, previously at [http://www.prfaa.com/files/Governor\\_Letter\\_on%20Status\\_January24\\_2006.pdf](http://www.prfaa.com/files/Governor_Letter_on%20Status_January24_2006.pdf).

<sup>20</sup> Puerto Rico, Legislative Assembly, Substitute House Bill 1014, 1054, and 1058, Sec. 2: “We, the People of Puerto Rico, in the exercise of our right to self-determination, demand [*exijimos*] from the President and the Congress of the United States of America, before December 31, 2006, an expression of their commitment to respond to the claim of the People of Puerto Rico to solve our problem of political status from among fully democratic options of a non-colonial and non-territorial nature.”

<sup>21</sup> Puerto Rico, Legislative Assembly, H. Conc. R. 25.

from Congress.<sup>22</sup> Since 2006, as noted above, legislation to move the status issue has been considered by the 110<sup>th</sup> and the 111<sup>th</sup> Congresses.

In addition to discussing the more recent developments that have shaped the Puerto Rico status debate in recent years, this CRS report reviews how the relationship between Puerto Rico and the United States has evolved since Puerto Rico became a United States possession following the Spanish-American War.

## Background

The Commonwealth of Puerto Rico, which lies approximately 1,000 miles southeast of Florida, comprises four larger islands (Culebra, Mona, Vieques, and Puerto Rico) and numerous smaller islands in the Greater Antilles. The total land area of the islands of Puerto Rico is roughly 3,500 square miles. The United States has exercised sovereignty over Puerto Rico since 1898, when Spain ceded the islands to the United States following the Spanish-American War. Refer to **Appendix A** of this report for summary information on important events in the governance of Puerto Rico by the United States.

## Early Governance of Puerto Rico

Between 1898 and 1900, U.S. military commanders governed Puerto Rico. In 1900, Congress passed the Foraker Act, the territory's first organic act, which established a civil government headed by a presidential appointee.<sup>23</sup> Seven years later, Congress passed the Jones Act of 1917, which extended U.S. citizenship to residents of Puerto Rico, established a bill of rights for the territory, provided for a popularly elected Senate, and authorized the election of a Resident Commissioner from Puerto Rico to the United States Congress.<sup>24</sup> In 1947, Congress provided for the popular election of the islands' governor.<sup>25</sup> In 1950, Congress, the President, and the people of Puerto Rico began a process that led to the Puerto Rican constitution, which is in effect today.<sup>26</sup>

## Development of the Constitution of Puerto Rico

Development of the Puerto Rican constitution proceeded in a series of steps. First, in 1950, the 81<sup>st</sup> Congress enacted and President Truman approved legislation that authorized a constitutional convention to develop the first constitution for the governance of Puerto Rico.<sup>27</sup> Second, voters

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<sup>22</sup> See Maria Miranda, "Insults overwhelm calls for unity at NPP convention," *San Juan Star*, August 21, 2006, p. 9; and Eva Llorens Velez, "NPP to vote on new plan to win statehood," *San Juan Star*, August 19, 2006, p. 6.

<sup>23</sup> P.L. 56-191, 31 Stat. 77.

<sup>24</sup> P.L. 64-368, 39 Stat. 951. An earlier Jones Act, that of 1916 and entitled the "Philippine Autonomy Act," dealt with the political status of the Philippines, which the United States had also acquired after the Spanish-American War. In 1934, Congress amended the act in preparation for full Philippine independence; and in 1946 the Philippines became an independent nation.

<sup>25</sup> P.L. 80-362, 61 Stat. 770.

<sup>26</sup> For a chronology of the entities and authorities that have governed Puerto Rico since 1898, see **Appendix A** of this report.

<sup>27</sup> P.L. 81-600, 64 Stat. 319, 48 U.S.C. 731b. "Fully recognizing the principle of government by consent, sections 731b to 731e of this title are adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption."

approved the initiation of the process through a referendum. Third, voters elected delegates to the constitutional convention in 1951, and the delegates worked throughout the year to draft that document. Fourth, the product of the convention—a constitution that established the structure and operation of government in the islands—was approved by the voters of Puerto Rico<sup>28</sup> and submitted to Congress and President Truman early in 1952. Fifth, the 82<sup>nd</sup> Congress modified the constitution and approved the amended version in July 1952.<sup>29</sup> The Puerto Rican constitutional convention approved the modified document shortly thereafter,<sup>30</sup> and Governor Luis Muñoz Marin declared the constitution in effect on July 25, 1952.

The constitution of 1952 establishes a republican form of government and a bill of rights, sets out provisions related to municipal government (including finance and revenue mechanisms), and outlines the following framework for governance of the islands:

- The Legislative Assembly consists of a 27-member Senate and a 51-member House of Representatives.
- The executive branch is headed by a governor elected to a four-year term. The governor makes executive appointments (with the advice and consent of the Senate),<sup>31</sup> serves as commander-in-chief of the militia, and exercises emergency powers.
- The authority for the judicial branch is vested in a Supreme Court (a chief justice and six associate justices), and other courts established by the Legislative Assembly. The Supreme Court adopts rules for other courts, and the chief justice directs the administration of the commonwealth courts.<sup>32</sup>

The constitution of 1952 modified aspects of civil government for the islands; but neither it nor the related public laws approved by Congress in 1950 and 1952 changed the fundamental relationship between Puerto Rico and the United States.<sup>33</sup> That relationship is determined by the

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<sup>28</sup> By a vote of approximately 387,000 yeas (76%) to 119,000 nays (24%), Puerto Ricans strongly supported the process through which the constitution was developed. Support for the resulting constitution was even stronger—375,000 yeas (82%) to 83,000 nays (18%).

<sup>29</sup> P.L. 82-447, 66 Stat. 327, 48 U.S.C. 731d.

<sup>30</sup> According to one commission report, the three changes required by Congress to the Commonwealth Constitution “were made by Puerto Rico and approved by the Puerto Rican Constitutional Convention and later by another referendum.” See United States-Puerto Rico Commission on the Status of Puerto Rico, *Status of Puerto Rico* (Washington: GPO, 1966), p. 36.

<sup>31</sup> The appointment of Secretary of State requires the advice and consent of the House of Representatives as well as the Senate.

<sup>32</sup> A United States district court has operated in Puerto Rico since 1900, when it was established by the Foraker Act. P.L. 56-191, section 34, 56 Stat. 84.

<sup>33</sup> P.L. 81-600 and P.L. 82-447, respectively. For example, the Senate committee report accompanying S. 3336, the bill that became P.L. 81-600, was unambiguous on this point: “This measure is designed to complete the full measure of local self-government in the islands by enabling the 2½ million American citizens there to express their will and to create their own *territorial* government. [Emphasis added]. S.Rept. 81-1779, p. 2. “This measure would not change Puerto Rico’s fundamental political, social, and economic relationship to the United States.” Ibid., p. 3. “S. 3336 is not a statehood bill. Nor is it an independence bill. It does not commit the Congress, either expressly or by implication to take any action whatever in respect to either. It in no way precludes future determination by future Congresses of the political status of Puerto Rico.” Ibid., p. 4. In this regard, former Attorney General Richard Thornburgh said in an interview, “Although Congress made approval of the local constitution by referendum a condition of its approval of the constitution, the local vote was given legal effect only by federal law, and the constitution entered into force only as allowed by federal law. Consequently, the local constitution does not create or define a separate constitutional sovereignty or vested right to the current status for the residents of the territory or the local government.” *Puerto Rico* (continued...)

Territorial Clause of the U.S. Constitution.<sup>34</sup> Nonetheless, the relationship—often called the status issue—continues to be the subject of recurring debate in Puerto Rico. The status debate is shaped by varying understandings of the Federal Relations Act, international concerns, and rulings by the Supreme Court.

## Federal Relations Act

P.L. 81-600, which authorized the process that led to the constitution of 1952, also continued the provisions of the Jones Act of 1917 that govern the relationship between Puerto Rico and the United States. That set of provisions is commonly referred to as the Federal Relations Act (FRA).<sup>35</sup> The FRA deals with matters that are subject to congressional authority and established pursuant to federal legislation, such as the citizenship status of residents, civil rights, trade and commerce, taxation and public finance, the administration of public lands controlled by the federal government, the application of federal law over navigable waters, congressional representation, and the judicial process.

Although the constitution of 1952 provides for self-government by Puerto Ricans, Congress ceded none of its own plenary authority over the islands. From time to time Congress has reasserted that authority by enacting legislation pertinent to local matters. For example, Congress amended FRA provisions dealing with local urban development and slum clearance authority.<sup>36</sup>

## International Attention

International attention to the political status of Puerto Rico introduced another element into consideration of the island's relationship with the United States. From 1946 through 1953, the United States submitted annual reports to the United Nations about progress made toward self-governance the U.S. territories of Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa. The General Assembly of the United Nations agreed, in 1953, to terminate the requirement for annual reports after considering statements by Puerto Rican and federal officials on the establishment of the commonwealth.<sup>37</sup> Some of the key findings in the General Assembly resolution include the following:

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(...continued)

*Herald*, October 4, 2002.

<sup>34</sup> U.S. Const., Art. IV, Sec. 3, cl. 2

<sup>35</sup> 48 U.S.C. 731. The FRA includes provisions originally contained in the Organic Act of 1917 (39 Stat. 951) that established a civil government in Puerto Rico. The act of 1917 is referred to as the Jones Act. The Jones Act of 1917 was the second organic act Congress approved for Puerto Rico; the first was the Foraker Act approved by Congress in 1900 (31 Stat. 77).

<sup>36</sup> The FRA authorizes the government of Puerto Rico to establish authorities for slum clearance and urban redevelopment but prohibits such entities from imposing taxes, and it authorizes the legislature of Puerto Rico to empower such authorities to undertake urban renewal projects. Congress amended this provision in 1955, subsequent to implementation of the constitution of 1952. See 48 U.S.C. 910, 910a. The FRA also authorizes the Puerto Rican legislature to enable such authorities to issue financial instruments (bonds or other obligations) to accomplish slum clearance and urban redevelopment objectives. See 48 U.S.C. 914.

<sup>37</sup> United Nations General Assembly, “Cessation of the Transmission of Information Under Article 73e of the Charter in Respect of Puerto Rico,” in *Resolutions Adopted by the General Assembly at Its Eighth Session During the Period from 15 September to 9 December 1953* (New York: General Assembly Official Records, 1953), Supplement No. 17 (A/2630), pp. 25-26.

- “the agreement reached by the United States of America and the Commonwealth of Puerto Rico, in forming a political association which respects the individuality and the cultural characteristics of Puerto Rico, maintains the spiritual bonds between Puerto Rico and Latin America and constitutes a link in continental solidarity”;
- the constitution and the associated documentation “provided that the Association of the Commonwealth of Puerto Rico with the United States of America has been established as a mutually agreed association”;
- as a result of the Puerto Rico constitution and the compact, “the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity.”<sup>38</sup>

This agreement, however, has not resolved the issue for all. As summarized by one analyst:

Few domestic issues have consistently generated as much international debate as that of Puerto Rico. It has been on the U.N. agenda since representatives of the Puerto Rican Nationalist party went to San Francisco for the signing of the U.N. Charter in June, 1945. Although the U.S. government may have convinced itself that it removed Puerto Rico from the international agenda in 1953, few others are convinced.<sup>39</sup>

## Supreme Court Decisions

Federal court decisions also influenced the debate over status. At the beginning of the 20<sup>th</sup> century, the Supreme Court issued a series of decisions generally referred to as the Insular Cases.<sup>40</sup> In them, the Court declared that territories are not integral parts of the United States, but are possessions, and that certain fundamental rights, but not all constitutional rights, extend to residents of the territories.<sup>41</sup> In general, analysts and legal practitioners agree with this contention.<sup>42</sup> Others, however, notably those who advocate for the continuation of the commonwealth, argue that other Supreme Court rulings indicate that Puerto Rico holds a unique status in relation to the United States.<sup>43</sup> They argue that in these cases, the justices concluded that

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<sup>38</sup> Office of the Commonwealth of Puerto Rico, *Documents on the Constitutional History of Puerto Rico* (Washington, DC 1964), p. 199-200.

<sup>39</sup> Robert A. Pastor, “Puerto Rico as an International Issue,” in Richard J. Bloomfield, ed., *Puerto Rico: The Search for a National Policy* (Boulder: Westview Press, 1985), p. 114.

<sup>40</sup> *DeLima v. Bidwell*, 182 U.S. 1 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Downes v. Bidwell*, 182 U.S. 224 (1901); *Dorr v. United States*, 195 U.S. 138 (1904); *Balzac v. Porto Rico*, 258 U.S. 298 (1922).

<sup>41</sup> See, in particular, *Balzac v. Porto Rico*, 258 U.S. 312-313 (1922). In 1975 the court reaffirmed that Congress and the Supreme Court could determine “the personal rights to be accorded to the inhabitants of Puerto Rico.” See *Examining Board v. Flores de Otero*, 426 U.S. 590. The Supreme Court ruled that Congress “may treat Puerto Rico differently from states so long as there is a rational basis for its actions.” See *Harris v. Rosario*, 446 U.S. 651 (1980).

<sup>42</sup> For a discussion on the authority of Congress to exercise jurisdiction over Puerto Rico see Arnold H. Leibowitz, *Defining Status: A Comprehensive Analysis of United States Territorial Relations* (Boston: Kluwer/Academic pub., 1989). See also Richard Thornburgh, “A Constitutional Path to Self-determination for Puerto Rico,” remarks to the Symposium on the Politics and Economics of Puerto Rico, sponsored by the Harvard Institute for International Development, Cambridge, MA, April 28, 1998, available at <http://www.puertorico-herald.org/issues/vol2n10/thornburgh-path.html>.

<sup>43</sup> Rep. Jamie Fuster, “Puerto Rico Self-Determination Act,” remarks in the House, *Congressional Record*, vol. 136, October 10, 1990, pp. 28335-28336.

Puerto Rico may exercise certain authority in a fashion comparable to that of the states.<sup>44</sup> Such decisions, however, do not alter the basic relationship of Puerto Rico to the United States as defined under the Territorial Clause of the U.S. Constitution.

## **Status Debates and Votes, 1952-1998**

Despite the 1952 constitution, the status issue has proven to be perennial and has repeatedly been the subject of partisan debate and popular vote in Puerto Rico since 1952. Moreover, each of Puerto Rico's three political parties is closely associated with a status preference. Popular Democratic Party—*Partido Democrático Popular* (PDP)—favors "Commonwealth" status, whether in the original form approved by Congress in 1950 or, as expressed in the 1998 plebiscite and party platform documents in 2004, an expanded version with additional authority for the government of Puerto Rico. The New Progressive Party—*Partido Nuevo Progresista* (PNP)—favors statehood. And the Puerto Rican Independence Party—*Partido Independentista Puertorriqueño* (PIP)—favors independence.

### **1967 Plebiscite**

Following the recommendation of the Commission on the Status of Puerto Rico (established pursuant to P.L. 88-271, 78 Stat. 17), the government of Puerto Rico organized a popular vote on the status options in July 1967. The commonwealth option received a majority of the votes. Members of the independence and statehood parties reportedly boycotted the plebiscite.<sup>45</sup> One political analyst contended that the 1967 plebiscite "was tainted by blatant interference by United States intelligence agencies."<sup>46</sup> Another author commented, as follows, that all parties claimed victory:

Each status group celebrated the results of the plebiscite: the independentistas because their boycott had been so effective; commonwealth, because of their clear majority; and statehood because of their gains.<sup>47</sup>

### **1991 Referendum**

In September 1991, the Puerto Rican legislature approved legislation that required a referendum be held on December 8, 1991. The voters in the referendum were asked to vote on self-determination or rights that would be incorporated into the commonwealth constitution, if the majority of voters approved.

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<sup>44</sup> See *Fornaris v. Ridge Tool Co.*, 400 U.S. 41 (1970). *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982), followed by a federal Court of Appeals decision in *United States v. Manuel Quinones*, 758 F. 2d 40 (1985). Also, *Examining Board v. Flores de Otero*, 426 U.S. 596; *Córdova & Simonpietri Ins. Co. v. Chase Manhattan Bank*, 649 F2d 36 (1981).

<sup>45</sup> Opposition to the plebiscite is discussed in Henry Wells, *The Modernization of Puerto Rico: A Political Study of Changing Values and Institutions* (Cambridge, Harvard University Press, 1969), p. 262. C. Arthur Borg, "The Problem of Puerto Rico's Political Status, *Revista del Colegio de Abogados de Puerto Rico*, vol. 37, August 1976, p. 493.

<sup>46</sup> Juan M. Garcia Passalacqua, "The 1993 Plebiscite in Puerto Rico: A First Step to Decolonization?," *Current History*, vol. 93, March 1994, p. 106.

<sup>47</sup> Roberta Ann Johnson, *Puerto Rico: Commonwealth or Colony?* (New York: Praeger Special Studies, 1980), p. 138.

The specific proposals included in the referendum were the right to determine the status of Puerto Rico without being subject to the plenary powers of Congress, guarantees of the continuance of Puerto Rico's culture (including official use of the Spanish language and retention of a separate Olympic team), and a guarantee of U.S. citizenship based on constitutional, not statutory, authority. Both the PDP and the PIP urged a "yes" vote.

Despite PDP and PIP support, a majority (53%) voted against the proposal. Some contended that the decision to schedule the referendum represented an indirect step to block statehood. Others perceived the rejection to reflect dissatisfaction with the governor. Another explanation offered for the vote was that some cast their ballots out of fear that a "yes" vote would result in a further degradation of federal benefits and the loss of U.S. citizenship.<sup>48</sup>

## **1993 Plebiscite**

In the 1992 election campaign, the PNP candidate for governor urged, and the legislature agreed, that a plebiscite on status be held "after the U.S. Congress failed to approve" status legislation.<sup>49</sup> Since definitions on the ballot were formulated by the political parties themselves, neither Congress nor executive branch officials intervened to ensure that the alternatives presented to the voters would pass constitutional muster. The disconnect between the ballot option and constitutional requirements was summarized in the House report accompanying legislation introduced three years after the plebiscite, as follows:

The 1993 definition of "Commonwealth" failed to present the voters with status options consistent with full self-government, and it was misleading to propose to the voters an option which was unconstitutional and unacceptable to the Congress in almost every respect.<sup>50</sup>

No option on the ballot in 1993 received a majority of votes. Some contend that statehood may have suffered the greatest loss, considering the governor and the legislature were members of the PNP and the plebiscite itself was a major campaign promise for the governor.<sup>51</sup> Others may argue that PDP advocates did not achieve a final victory in the 1993 vote because Congress rejected the commonwealth option presented on ballots.

## **1998 Action in the 105<sup>th</sup> Congress**

On March 4, 1998, the House approved H.R. 856, which would have authorized referenda at least once every ten years, through which the people of Puerto Rico could indicate their preference among three status options: (1) "Puerto Rico should retain Commonwealth"; (2) "The people of Puerto Rico should become fully self-governing through separate sovereignty in the form of

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<sup>48</sup> Robert Friedman, "Voters Say No in Stunning Defeat for RHC," *San Juan Star*, December 9, 1991, p. 3.

<sup>49</sup> Statement taken from: U.S. Congress, House Committee on Resources, *United States-Puerto Rico Political Status Act*, report to accompany H.R. 3024, 104<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 104-713 Part 1, (Washington: GPO, 1996), p. 18.

<sup>50</sup> *Ibid.*, p. 19.

<sup>51</sup> For a discussion of the 1993 plebiscite and lessons learned see the following articles: Juan M. Garcia Passalacqua, "The 1993 Plebiscite in Puerto Rico: A First Step to Decolonization?," *Current History*, vol. 93, March 1994, pp. 103-107; José O. Díaz, "Puerto Rico, the United States, and the 1993 Referendum on Political Status," *Latin American Research Review*, vol. 30, 1995, pp. 203-211.

independence or free association”; or (3) “Puerto Rico should become fully self-governing through Statehood.”<sup>52</sup> The Senate, however, did not take formal action on the measure.

After Congress declined to take additional action, elected officials in Puerto Rico called for a referendum on this issue. On September 17, 1998, the Senate approved a resolution expressing the sense of the Senate that “(1) the Senate supports and recognizes the right of United States citizens residing in Puerto Rico to express democratically their views regarding their future political status through a referendum or other public forum, and to communicate those views to the President and Congress; and (2) the Federal Government should review any such communication.”<sup>53</sup>

## 1998 Plebiscite

Having heard both the House and the Senate assert support for Puerto Ricans to express their status preference, the islanders conducted a plebiscite on December 13, 1998. Five alternatives were listed on the ballot: “limited self-government”; “free association”; “statehood”; “sovereignty”; and “none of the above.” Disputes arose as to the definition of each of the ballot alternatives; and commonwealth advocates, among others, reportedly urged a vote for “none of the above.” They asserted that the commonwealth definition on the ballot “failed to recognize both the constitutional protections afforded to our U.S. citizenship and the fact that the relationship is based upon the mutual consent of Puerto Rico and the United States.” In the end, a slim majority of voters in that plebiscite selected “none of the above” (50.3%).<sup>54</sup>

There have been no further plebiscites or referenda on the status issue since the inconclusive 1998 vote.

**Appendix B** of this CRS report summarizes the voting results from Puerto Rican referenda and plebiscites on the status issue since 1967.

## Federal Activity After 1998

### 106<sup>th</sup> Congress

Following an examination of the 1998 plebiscite, a 1999 congressional committee report concluded that there was a need to “continue the process of enabling the people of Puerto Rico to implement a structured process of self-determination based on constitutionally valid options Congress is willing to consider.”<sup>55</sup> The absence of consensus in the 1998 plebiscite led some in Congress to call for further consideration of the status issue.<sup>56</sup> In response to the inconclusive

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<sup>52</sup> H.R. 856, 105<sup>th</sup> Cong., Sec. 4.

<sup>53</sup> S.Res. 279, 105<sup>th</sup> Cong.

<sup>54</sup> U.S. Congress, House Committee on Resources, *The Results of the 1998 Puerto Rico Plebiscite*, Serial No. 106-A, 106<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1999), p. 20.

<sup>55</sup> *Ibid.*, p. 7.

<sup>56</sup> “House Narrowly Supports Puerto Rico Plebiscite; Senate Takes No Action,” *Congressional Quarterly 1998 Almanac* (Washington: Congressional Quarterly, Inc., 1998), pp. 13-6 and 13-7. See also “Puerto Rico Political Status,” *Congressional Digest*, vol. 77, May 1998 (Washington: Congressional Digest Corp., 1998), pp. 142-160.

results of the plebiscite, four Members of Congress who chaired committees and a subcommittee with jurisdiction over Puerto Rico summarized the impact of the vote as follows:

[A]fter almost fifty years of local constitutional government in Puerto Rico by U.S. citizens, now the lack of majority consent to the current form of internal self-government by those who are disenfranchised nationally, calls into question the continued acceptability of the status quo. This problem cannot be unilaterally resolved by the U.S. citizens of Puerto Rico acting under the local constitution, but rather, by working with the federal government which has the sole power, as well as a duty, to change Puerto Rico's political status into one of full enfranchisement.<sup>57</sup>

The 106<sup>th</sup> Congress continued to give attention to the matter; and on October 4, 2000, the House Committee on Resources held a hearing on H.R. 4751. The bill, which would have recognized Puerto Rico "as a nation legally and constitutionally," received no further action.

In a further effort to move toward consensus on the status issue, the 106<sup>th</sup> Congress appropriated \$2.5 million for FY2001 for "objective, non-partisan citizens' education and a choice by voters on the islands' future status."<sup>58</sup> The appropriation could not be allocated, however, until the Elections Commission of Puerto Rico submitted an expenditure plan developed by the three major political parties in Puerto Rico to the U.S. House and Senate Appropriations Committees. The statute also required views not in agreement with the plan to be communicated to Congress. The commission plan was never submitted. As a result, appropriated funds were never expended; they reverted to the Treasury.<sup>59</sup>

## **Executive Branch Action in 2000**

President Clinton issued an executive order in 2000 that established the President's Task Force on Puerto Rico's Status.<sup>60</sup> The task force membership included the director of the Office of Intergovernmental Affairs in the White House and officials from each executive department.<sup>61</sup> Originally, the task force was to report on its actions by May 1, 2001, but the deadline provision of the executive order was amended twice. The first amendment extended the deadline to August 1, 2001.<sup>62</sup> The second amendment established a more flexible time frame, as follows:

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<sup>57</sup> Reps. Don Young, Benjamin Gilman, Dan Burton, and Elton Gallegly, letter to Hon. Charlie Rodriguez, President, Senate of Puerto Rico and Honorable Edison Misla-Aldarondo, Speaker, Puerto Rico House of Representatives, April 5, 2000.

<sup>58</sup> P.L. 106-346, Department of Transportation and Related Agencies Appropriations Act, FY2001, 114 Stat. 1356A-47.

<sup>59</sup> The \$2.5 million was not the first appropriation approved by Congress for the purpose of furthering status discussions. In 1989, \$1.5 million was appropriated for grants to the three main political parties in Puerto Rico for the costs associated with participating "in the legislative process involving the future political status of Puerto Rico." See P.L. 101-45, Supplemental Appropriations Act for the Department of Veterans Affairs, 103 Stat. 125.

<sup>60</sup> U.S. President (Clinton), "Establishment of the President's Task Force on Puerto Rico's Status," Executive Order 13183, *Federal Register*, vol. 65, December 29, 2000, p. 82889.

<sup>61</sup> The original list of members is available on the White House website at <http://www.whitehouse.gov/news/releases/2003/12/20031205-6.html>, visited March 2, 2007.

<sup>62</sup> U.S. President (Bush), "Amendment to Executive Order 13183, Establishment of the President's Task Force on Puerto Rico's Status," Executive Order 13209, *Federal Register*, vol. 66, April 30, 2001, p. 22105.

The Task Force shall report on its actions to the President as needed, but no less frequently than once every two years, on progress made in the determination of Puerto Rico's ultimate status.<sup>63</sup>

## **President's Task Force Report, December 2005**

The President's Task Force on Puerto Rico's Status issued a document in December 2005 discussing the status issue and presented the following three recommendations:

- Within a year, Congress should provide for a plebiscite to be held to enable the people of Puerto Rico to choose between remaining a U.S. territory or attaining “a permanent non-territorial status with the United States.”
- If the results from the plebiscite indicate that the people want to establish a non-territorial status, Congress should provide for a second plebiscite that will enable voters to choose between statehood and independence. On the basis of that selection, Congress “is encouraged to begin a process of transition toward that option.”
- If, in the original plebiscite, the people of Puerto Rico elect to remain a U.S. territory, plebiscites should take place “periodically, as long as that status continues, to keep Congress informed of the people’s wishes.”<sup>64</sup>

The task force included representatives from each Cabinet department. It is important to note, however, that the task force recommendations do not necessarily represent the public policy of any particular presidential administration. Deputy Assistant Attorney General and task force co-chair Kevin Marshall addressed this point during the November 15, 2006, Senate Energy and Natural Resources committee hearing on Puerto Rico's status. In response to a question from Senator Bingaman, Marshall stated that “The [George W. Bush] administration has not taken any public position on the task force report. But the executive orders creating the task force didn’t contemplate that the president would publicly approve or disapprove of the report.”<sup>65</sup> In a subsequent hearing, however, Mr. Marshall announced that the George W. Bush Administration supported the task force report. In his prepared statement (for a House Subcommittee on Insular Affairs hearing) delivered on April 25, 2007, Marshall noted that he was authorized to affirm that the “Administration supports the Task Force report.”<sup>66</sup> During the hearing, Marshall also emphasized that H.R. 900 was consistent with the task force’s conclusions regarding constitutionally viable status options for Puerto Rico.

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<sup>63</sup> U.S. President (Bush), “Executive Order Amendment to Executive Order 13183, Establishment of the President’s Task Force on Puerto Rico’s Status,” Executive Order 13319, *Federal Register*, vol. 68, December 3, 2003, p. 68233.

<sup>64</sup> U.S. President’s Task Force on Puerto Rico’s Status, *Report by the President’s Task Force on Puerto Rico’s Status*, p. 10.

<sup>65</sup> GPO records indicate that the official transcript has not yet been published. Marshall’s quotation appears in “Senate Energy and Natural Resources Committee Holds Hearing on Puerto Rico Status,” CQ Transcript, November 15, 2006.

<sup>66</sup> Statement of Kevin Marshall, U.S. Department of Justice, no longer available on the Internet, previously found at [http://resourcescommittee.house.gov/Media/File/Hearings/20070425/Testimony\\_Marshall.pdf](http://resourcescommittee.house.gov/Media/File/Hearings/20070425/Testimony_Marshall.pdf).

## President's 2007 Task Force Report

As noted above, a 2003 executive order required that a status task force report be produced at least every two years. The task force issued a report in December 2007 that reiterated the conclusions reached in 2005 (discussed above). The 2007 task force noted that although it was not predisposed to any particular status option, only three constitutionally viable options were available to Puerto Rico: (1) continuing the status quo as a U.S. territory subject to the Territorial Clause; (2) statehood; or (3) independence.<sup>67</sup> In addition to reaching the same fundamental conclusions as in 2005, the 2007 report commented on reactions to the previous version of the report. In particular, the task force in 2007 noted that use of the term “commonwealth” with respect to Puerto Rico “describe[s] the substantial political autonomy enjoyed by Puerto Rico” and “appropriately captures Puerto Rico’s special relationship with the United States.” However, the task force said, the island remains a U.S. territory subject to the congressional plenary powers under the Territorial Clause.<sup>68</sup> This language suggested that although the task force perhaps more explicitly recognized a degree of Puerto Rican autonomy than it did in the 2005 report, the 2007 report nonetheless reiterated that the Territorial Clause grants Congress wide jurisdiction over the island as long as Puerto Rico remains a U.S. territory. As in 2005, the task force also concluded that so-called “enhanced commonwealth” was constitutionally impermissible.<sup>69</sup>

The 2007 task force report also reiterated the 2005 recommendations concerning

- a “federally sanctioned plebiscite” to determine whether Puerto Ricans wish to maintain the status quo or pursue a “constitutionally viable” status option;
- the need for a second plebiscite that would present choices between either statehood or independence if Puerto Ricans choose to pursue non-territorial status in the first plebiscite; and
- the view that plebiscites should occur “periodically” to revisit the status question if Puerto Ricans choose to maintain the status quo.<sup>70</sup>

## President Obama's Executive Order

On October 30, 2009, President Obama issued an executive order that further amended the Clinton order issued in 2000 (E.O. 13183), as well as one that President Obama issued in the first weeks of his Administration, on government contracting (E.O. 13494).<sup>71</sup> The Obama directive mandated that the task force, as created in this Administration, issue a report on actions taken with regard to the status issue by the end of October 2010. It also amended the predecessor documents by stating that it is the policy of the Administration to promote job creation, economic development, and other objectives in Puerto Rico, and to ensure that labor management costs would be treated as allowable in federal contracts.

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<sup>67</sup> U.S. President's Task Force on Puerto Rico's Status, *Report by the President's Task Force on Puerto Rico's Status* (Washington: December 2007), p. 1; pp. 5-10; available at <http://www.usdoj.gov/opa/documents/2007-report-by-the-president-task-force-on-puerto-rico-status.pdf>.

<sup>68</sup> *Ibid.*, p. 5.

<sup>69</sup> *Ibid.*, pp. 6-7.

<sup>70</sup> *Ibid.*, pp. 10-11.

<sup>71</sup> U.S. President (Obama), “Amendments to Executive Orders 13183 and 13494,” Executive Order 13517, *Federal Register*, vol. 74, Nov. 5, 2009, pp. 57239-40.

## President's 2011 Task Force Report

In March 2011, the Obama Administration task force issued its first report.<sup>72</sup> Perhaps given the 2009 executive order's statements regarding economic issues, the 2011 task force report addressed topics beyond status per se. Unlike previous task force reports, the 2011 document made a range of economic recommendations. The report also addressed other issues such as healthcare access, public safety, and tourism as components of Puerto Rico's overall economic development—matters which are beyond the scope of this report.

On status specifically, the task force recommended the following.<sup>73</sup>

- The President, Congress, political leaders in Puerto Rico, and interested citizens have an opportunity to express their status preferences and have them “acted upon by the end of 2012 or soon thereafter.”
- Permissible status options include those long identified as constitutionally viable by previous task force reports: the status quo (commonwealth), free association, independence, or statehood.
- The task force expressed a “marginal preference” for reconsidering status—if the people of Puerto Rico choose to do so—through a two-stage plebiscite first considering independence or maintaining a relationship with the U.S., and then considering various options based on the outcome of the first vote. This approach would be generally consistent with the two-stage plebiscites considered in recent Congresses and discussed throughout this report.
- If status is reevaluated through a plebiscite, the task force recommended that only those living in Puerto Rico should be permitted to participate. As noted elsewhere in this report, some recent congressional proposals have advocated for participation by Puerto Ricans living in the mainland U.S., although the topic has been subject to debate. H.R. 2499, which passed the House in the 111<sup>th</sup> Congress, would have extended plebiscite voting to all U.S. citizens born in Puerto Rico (but not necessarily living there at the time of the plebiscite) who otherwise satisfied local eligibility criteria.
- If Puerto Ricans chose independence, the task force recommended that U.S. citizenship should be preserved for those who are already U.S. citizens.
- If Puerto Rico were admitted as a state, the task force found that English would need to play “a central role in the daily life of the Island.”
- If a clear status preference is not expressed on the island “in the short term,” the task force recommended self-executing federal legislation that specifies acceptable status options.

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<sup>72</sup> U.S. President's Task Force on Puerto Rico's Status, *Report by the President's Task Force on Puerto Rico's Status* (Washington: March 2011); available at <http://www.usdoj.gov/opa/documents/2007-report-by-the-president-task-force-on-puerto-rico-status.pdf>.

<sup>73</sup> See, for example, *ibid.*, pp. 3-4.

## Issues of Debate on Political Status

The establishment of the commonwealth in 1952 did not resolve all questions on the political status of Puerto Rico. Puerto Rico remains a territory of the United States, subject to congressional authority under the Territorial Clause of the U.S. Constitution. Some Puerto Ricans, however, believe the commonwealth enjoys a unique relationship to the United States and the federal government, and that it has some attributes of separate sovereignty.<sup>74</sup> Others argue that commonwealth status is a temporary political status that falls short of two permanent status options—statehood or independence as a sovereign nation. Continuation or even enhancement of this status leaves the governance of Puerto Rico subject to the Territorial Clause, and therefore subject to congressional action. Others disagree, arguing that the current status can be a permanent status option that requires adjustments (“enhancements”) over time.

If Congress chooses to reexamine the political status of Puerto Rico, a number of policy issues might arise, among which are the following:

- What process will be used to consider the political status options?
- How is each option to be defined?
- What impact would Puerto Rican statehood have on the U.S. Congress?
- What associated policy matters might be raised if Congress debates status?

Each of these issues is discussed below.

### Process Options

Past congressional debate and discussions on the political status of Puerto Rico have focused not only on the end result (“Will the status change, and if so, what will it be?”), but also on the process by which the debate and vote might proceed. The process used to identify, discuss, and vote on status options would likely be established before debate begins on the “final” status options. Bills considered by the Puerto Rican legislature in 2005 dealt with one step of the process—a call from the people of Puerto Rico for a federal response to the status issue. But the parties in Puerto Rico could not reach consensus on a procedural matter, and the governor vetoed the measure. The gubernatorial veto of the measure approved by the Puerto Rican legislature and the history of controversy and popular votes on status proposals suggest that procedural questions will require careful planning and decisions. Arguably, an agreement on procedure is necessary for the resolution of subsequent complex questions (e.g., the definition of status options).

Neither the U.S. Constitution nor precedents establish immutable procedures for the resolution of controversies concerning the political status of a territory of the United States. Throughout U.S.

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<sup>74</sup> They argue that Puerto Rico has a culture and identity separate from the United States by pointing to the presence of a Puerto Rican National Olympic Committee (see <http://www.olympic.org/en/content/National-Olympic-Committees/puerto-rico/>), and, in past years, to the tax treatment of corporations and individuals in Puerto Rico. For information on tax policies, see CRS Report RL32708, *Federal Taxes and the U.S. Possessions: An Overview*, by Steven Maguire. Also, some officials reportedly refer to Puerto Rico as a “country.” See, for example, Rosario Fajardo, “AAV, Fortuño Agree on Need to Move Status Issue,” *San Juan Star*, February 15, 2005, p. 4: “I believe the moment has come for the country to have the opportunity of choosing between different alternatives,’ [Governor Anibal] Acevedo Vilá said.”

history, various means have been used to determine whether a territory affiliated with the United States changes its status to statehood, independence with legal ties of free association (or a sovereign nation), or remains a territory.

History, however, presents some broad outlines and variations. The process of debate involves the following:

- assessment of how a change of status for the territory might affect national interests of the United States;
- assessment of the viewpoints of the affected population;
- development of a means by which the preferences of the population are presented to Congress; and
- consideration of legislative mechanisms through which Congress and the President act on the status options.

Although the process for resolving the political status question of the territories varies, one element remains common throughout the nation's history—Congress exercises an essential role in the process and resolves (or decides not to resolve) the question.

Brief summaries of some of the processes used in the past to resolve political status issues follow. These summaries do not begin to exhaust or explore the full range of issues aired during the debates on changes in the political status of territories; they are offered as examples to provide basic information on historical precedents.

## Paths to Statehood

Historically, the transition of a territory to statehood has taken a variety of procedural paths.<sup>75</sup> The path for some territories was long and even tortuous, taking many years and involving strife and loss of life. The path for other territories was relatively straightforward. One team of researchers specifically tasked to look at the issue from the perspective of the status debate on Puerto Rico identified six paths.<sup>76</sup> The report issued by the team categorized those paths as follows:<sup>77</sup>

1. the union of the first 13 colonies, each of which wrote its own constitution;<sup>78</sup>
2. unilateral action in territories to present an organized “state” to Congress (including electing representatives to Congress) for consideration to be admitted to the Union, also known as the “Tennessee plan”;

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<sup>75</sup> The U.S. Constitution provides for the admission of new states “by the Congress into this Union,” but does not specify a process to be followed; the pertinent constitutional provision proscribes certain actions from being taken, i.e., no state formed within another, by the conjoining of two or more states or parts of states without consent of legislatures and Congress. See U.S. Constitution, Art. IV, Sec. 3, cl. 1.

<sup>76</sup> Grupo de Investigadores Puertorriqueños, *Breakthrough from Colonialism: An Interdisciplinary Study of Statehood* (Río Piedras, Puerto Rico: Editorial de la Universidad de Puerto Rico, 1984), pp. 1207-1226. Hereafter cited as *Breakthrough*.

<sup>77</sup> It might be argued that other “paths” to statehood could be identified, or other configurations of the above might be developed. For example, options 1 and 5 might be considered in concert since they both include states admitted to the union primarily through initiatives undertaken by residents of the future states, with little or no congressional action.

<sup>78</sup> Connecticut, Delaware, Georgia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia.

3. annexation of an independent republic;<sup>80</sup>
4. creation of new states from existing states;<sup>81</sup>
5. development of a state constitution without congressional support;<sup>82</sup> and
6. congressional enactment of enabling legislation.<sup>83</sup>

Another perspective is presented in a report prepared by contractors for a commission on Alaska's statehood. The commission report identified two basic paths—one stemming from congressional initiatives; the other, from territorial forces:

Initially, as provided in the Northwest Ordinance, Congress would authorize a territory to initiate the steps toward statehood. Once the territory drafted a constitution and set up a government, the Congress would pass a second statute admitting the territory as a state. On the other hand, the respective territory would present itself to the Congress as ready for statehood, thus leaving out the step in which the Congress passed the enabling act or gave the territory the go-ahead to start meeting the requirements of statehood.<sup>84</sup>

## **Independence: Development of a Sovereign Identity**

Some territories affiliated with the United States eventually became independent sovereign nations after considerable congressional debate and years of action (or inaction). For example, the Philippine Islands gained independence in 1946 after decades of negotiations between Filipino officials and Congress, and years after Congress passed legislation in 1934 “To provide for the complete independence of the Philippine Islands, to provide for the adoption of a constitution and a form of government for the Philippine Islands, and for other purposes.”<sup>85</sup> In essence, for roughly 50 years, the federal government exercised unilateral authority in developing and modifying the political status of the Philippines, largely through legislation that established trade policies, provided financial assistance, placed restrictions on immigration, established a commonwealth government with limited powers, and established governance policies on the islands.<sup>86</sup> As summarized by one author:

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(...continued)

<sup>79</sup> Tennessee, Michigan, Iowa, California (some contend that California entered as an independent republic operating under military government rule), Oregon, Kansas, and Alaska. For a description of the Tennessee Plan process, see *Breakthrough*, pp. 1209, 1210; see also William Tansill, *Elections of Congressional Delegation Prior to the According of Statehood*, Legislative Reference Service, 1955.

<sup>80</sup> Texas.

<sup>81</sup> Vermont, Kentucky, Maine, and West Virginia.

<sup>82</sup> Arkansas, Florida, Wyoming, Idaho, and Hawaii.

<sup>83</sup> Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Wisconsin, Minnesota, Nevada, Nebraska, Colorado, South Dakota, North Dakota, Montana, Washington, Utah, Oklahoma, Arizona, and New Mexico.

<sup>84</sup> *The Concept of Statehood within the American Federal System*; prepared under contract for the Alaska Statehood Commission by Birch, Horton, Bittner, and Monroe, PC (Fairbanks, AK: The Commission, 1981), p. 70.

<sup>85</sup> P.L. 73-127, 48 Stat. 456 et seq. See U.S. President (Roosevelt), Proclamation No. 2695, 11 F.R. 7517, 60 Stat. 1352.

<sup>86</sup> The Independence Act of 1934 retained selected federal control over the Philippines. For example, the statute directed the President to withdraw all right of possession and sovereignty “(except such naval reservations and fueling stations as are reserved under section 5)” and maintained the force of federal law “Except as in this Act otherwise provided ... until altered” by the commonwealth government of the islands or by Congress.

Although the Independence Act had provided that the provisions of the act would not take effect “until accepted by concurrent resolution of the Philippine Legislature or by a convention called for the purpose of passing upon that question,” which suggested a bilateral agreement, these changes were made unilaterally.<sup>87</sup>

## Free Association

While never formally included in the penumbra of United States territories, the Pacific island nations with which the United States has entered into compacts of free association (the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands) illustrate another possible outcome if a territory such as Puerto Rico becomes an independent, sovereign nation. Compacts of free association establish mutual agreements that legally connect the political, economic development, military, or other interests of the United States with those of the sovereign nations. Such compacts recognize that independent nations do not fall under the suzerainty of the United States, but are closely allied in terms specified in the compacts.

In 1947, after the close of World War II, the United Nations established the Trust Territory of the Pacific Islands and formalized a Trusteeship Agreement with the United States for the administration of the islands.<sup>88</sup> The federal government exercised administrative control over the islands of Micronesia previously controlled by the Japanese (the Northern Mariana, Caroline, and Marshall Islands) first through the Department of the Navy, and, in 1951, through the Department of the Interior (except for the majority of the Northern Mariana Islands, which reverted to administration by the Navy, from 1952 through 1962). The islands were not U.S. territories pursuant to the Territorial Clause of the Constitution. As summarized by one historian, the islands

were governed as occupied foreign territories so the due process Constitutional questions which arose in the territories acquired after the Spanish-American War did not arise here. These territories were outside the U.S. Constitution.... The federal courts held that the Trust Territory was not an agency or territory of the United States although “like” a territory in some respects.<sup>89</sup>

Stewart L. Udall, Secretary of the Interior in the 1960s, established the Congress of Micronesia in 1964 as the legislative body for the geographically widespread and culturally diverse collection of islands.<sup>90</sup> In 1967 the Congress of Micronesia created the Future Political Status Commission to consider political status options for the trust territory; debate on the political relationship of various island groups to the United States stretched over decades.<sup>91</sup> In order to negotiate such compacts, the residents of the islands organized into three separate entities—the Federated States

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<sup>87</sup> Arnold H. Leibowitz, *Colonial Emancipation in the Pacific and the Caribbean: A Legal and Political Analysis* (New York: Praeger, 1976), p. 25.

<sup>88</sup> Congress authorized President Truman to approve a trusteeship agreement between the United States and the Security Council of the United Nations (P.L. 80-204, 61 Stat. 397). One author described the evolution of the agreement as follows: “After World War II the United Nations, at U.S. insistence, invented the concept of “strategic trusteeship,” designated Micronesia as the Trust Territory of the Pacific Islands, and granted total hegemony to the United States.” John A. Worthley, “Legislatures and Political Development: The Congress of Micronesia,” *The Western Political Quarterly*, vol. 26, no. 4, December 1973, pp. 676-677.

<sup>89</sup> Arnold H. Leibowitz, *Defining Status: A Comprehensive Analysis of United States Territorial Relations* (Boston: Martinus Nijhoff Publishers, 1989), p. 33.

<sup>90</sup> For background on the establishment of the Congress of Micronesia, and the text of the Secretarial order, see Norman Meller, *The Congress of Micronesia* (Honolulu: University of Hawaii Press, 1969).

<sup>91</sup> Roger W. Gale, “A New Political Status for Micronesia,” *Pacific Affairs*, vol. 51, no. 3 (Autumn 1978), pp. 427-447.

of Micronesia (FSM), the Republic of Palau, and the Republic of the Marshall Islands (RMI). (Representatives of a different group of islands in the district, the Northern Mariana Islands, opted to retain closer affiliation with the United States, eventually agreeing in 1975 to a covenant that established the Commonwealth of the Northern Mariana Islands.) Through constitutional conventions, the elected officials developed and ratified separate constitutions and established republican governments headed by elected officials. After the three independent republics assumed full responsibility for the islands' internal governance, U.S. and island officials spent years negotiating the terms of the compacts of free association. Two of those compacts, for FSM and the RMI, were previously renegotiated.<sup>92</sup> Portions of the compact with Palau were renegotiated in 2010.<sup>93</sup>

## Recent Debate over the Process in Puerto Rico

Much of the debate among Puerto Rico's officials currently centers around alternative mechanisms for discussing and resolving the status options. One option, advocated by the former governor and the PDP during the 110<sup>th</sup> Congress, was to establish a constituent assembly or local constitutional conventions. The members of the assembly would be elected by the people of Puerto Rico and would be charged with developing the status options to be offered to the people of Puerto Rico and to Congress.<sup>94</sup> Delegates to the assembly, pursuant to the legislation that had been introduced by the governor, would "establish a dialogue" with executive branch officials and submit a report to the President and to Congress on the proposals for the political relationship of Puerto Rico to the United States.<sup>95</sup> The report of the assembly, according to the proposal, "must represent alternatives to overcome all vestiges of colonialism" and "establish clearly the non-territorial nature of the future status of Puerto Rico."<sup>96</sup> Negotiations between representatives of Puerto Rico and Congress arguably would have addressed issues of the constitutionality of the status options developed by the assembly.

A second option, reportedly supported by the majority of the legislature at the time and the former Resident Commissioner and now Governor, Luis Fortuño, called for a referendum to be held in 2005 in Puerto Rico. If, under the proposal, a majority of the voters had approved the convening of a referendum, the process of establishing federally defined status options would have begun. Options developed by federal officials would then have been presented to the people of Puerto

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<sup>92</sup> Background information obtained from FSM Representative Office, *The Federated States of Micronesia* (Washington: 1983), available from the author. For information on the renegotiated Compacts of Free Association, see CRS Report RL31737, *The Marshall Islands and Micronesia: Amendments to the Compact of Free Association with the United States*, by Thomas Lum. The compacts texts are found in 48 U.S.C. 1901.

<sup>93</sup> Palau entered into a Compact of Free Association with the United States in 1995. The economic assistance provisions of Palau's Compact came up for renewal in 2009. In January 2010, the United States and Palau finalized negotiations on a 15-year, \$250 million assistance package. CRS specialist Thomas Lum provided consultation on this point.

<sup>94</sup> Governor Acevedo Vilá wrote to President Bush that the legislation he introduced would provide for a referendum on July 10, 2005, that would present two options to the voters: first, "a formal request to the United States Congress to authorize a federally mandated plebiscite" that would enable voters to choose among the commonwealth, statehood, and independence alternatives "as defined by Congress," or second, to approve the convening of a Constitutional Assembly on Status. Governor Acevedo Vilá, letter to President George W. Bush, February 11, 2005.

<sup>95</sup> Art. 7.1 of legislation "To implement a Referendum to determine the procedural mechanism through which to determine future changes regarding the political status of Puerto Rico and the relationship between the people of Puerto Rico and the United States," available from the author.

<sup>96</sup> Ibid.

Rico for their consideration. A plebiscite would then have been held before July 1, 2007, on those options.<sup>97</sup>

A third option, described previously in this report, was based upon a PIP proposal. The PNP-led Puerto Rican legislature approved the measure with a PDP-supported amendment, but the governor vetoed it. According to the bill, if Congress had not reacted within 90 days of the deadline, the Puerto Rican legislature would have been “committed to legislate” to enable the people of Puerto Rico to choose the procedural mechanism to be used to further the status discussions. The mechanisms mentioned in the legislation included, but were not limited to, “a Constitutional Convention on Status, or a petition for a plebiscite with federal approval.”<sup>98</sup>

Years after these proposals were debated among Puerto Rican officials, many questions remain unanswered. Were Congress to take up the status debate, some procedural questions that might be raised include the following:

- Would the legislation be self-executing? That is, would Congress enact legislation that requires no further congressional action once the people of Puerto Rico reach consensus on a status option? Would congressional approval of self-executing legislation be consistent with the responsibility of Congress under the Territorial Clause?
- If the Puerto Rican legislature and the governor are unable to reach agreement on legislation to initiate the process, would Congress respond to a concurrent resolution adopted solely by the legislature?<sup>99</sup>
- Would a plurality or a majority of registered voter participation be required to indicate support for a final status option? Are there circumstances under which a plurality vote for a status option would be acceptable to Congress and the people of Puerto Rico? None of the 110<sup>th</sup> Congress bills would have established minimum thresholds for support among voters (e.g., minimum percentages for a result to be considered valid); neither would the legislation before the 111<sup>th</sup> Congress. A plurality rather than a majority vote could have been likely in the S. 1936 plebiscite because the bill would have presented four options to voters simultaneously.
- Would Puerto Ricans who reside on the mainland or in other parts of the United States besides Puerto Rico be eligible to vote on the status proposal? The two House bills introduced in the 110<sup>th</sup> Congress, like the 111<sup>th</sup> Congress legislation, contained language suggesting that Puerto Ricans living outside the islands would be allowed to participate.
- At what stage (or stages) in the decision-making process would the people of Puerto Rico participate? In the election of officials specifically tasked with resolving the issue? In establishing the status definitions? In voting on the

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<sup>97</sup> Rosario Fajardo, “AAV, Fortuño Agree on Need to Move Status Issue,” *San Juan Star*, February 15, 2005, p. 4.

<sup>98</sup> “Act to Petition and for the Self-Determination of the People of Puerto Rico,” Sec. 2.

<sup>99</sup> On January 23, 1997, the legislature enacted Concurrent Resolution 2, “requesting Congress to sponsor a vote based on definitions it would be willing to consider if approved by voters.” See U.S. Congress, Senate Committee on Energy and Natural Resources, *Puerto Rico Status*, workshop, April 2, 1998, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1998), p. 3.

definitions established by others, including federal officials? In a referendum on legislation approved by the Puerto Rican legislature or by Congress?

## Definitions of Status Options

Definitions or, more specifically, the lack of definitions of the political status options for Puerto Rico, compound the complexity of the debate. Agreement on standard definitions of the terms may be elusive, even if the terms are initially accepted as defined. In particular, the lack of a clear and stable legal definition for the term “commonwealth” complicates the debate. Some argue that Congress should define the terms. Others, however, advocate direct involvement by the people of Puerto Rico, or their elected leaders, in setting the definitions. The history of debate, particularly the 1998 plebiscite, indicates that in the absence of constitutionally valid status options and definitions acceptable to Congress, the debate over status yields few or no conclusive results.<sup>100</sup>

Brief summaries of aspects of each status option follow in order to provide basic information on the options. The information below does not represent official descriptions of status options, but is provided only to give general background information. The options are presented in alphabetical order.

### Commonwealth

The commonwealth option represents a continuation of the current status of Puerto Rico. The territorial clause of the United States Constitution empowers Congress with the authority to regulate territories.<sup>101</sup> Commonwealth status for Puerto Rico is based on statutory provisions<sup>102</sup> and the Constitution of Puerto Rico that established a republican form of self-government. Under current federal law, residents of Puerto Rico enjoy U.S. citizenship, but many contend that the Puerto Rican identity reflects a degree of autonomy that enables the island to remain somewhat separate from, but part of, the United States.<sup>103</sup> Some support an enhanced or “new” commonwealth status and seek changes in the current relationship to increase the autonomy of Puerto Rico. Aspects of enhanced commonwealth considered but rejected by Congress in 1991 and 2001 included providing the government of Puerto Rico authority to certify that certain federal laws would not be applicable to the commonwealth, mandating that the President consult with the governor on appointments to federal offices in Puerto Rico that require Senate approval, recognizing a permanent relationship between Puerto Rico and the United States that cannot be

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<sup>100</sup> Constitutional implications of three status options (“new commonwealth,” statehood, and independence) were reviewed by the Department of Justice in response to a congressional request. See Robert Raben, Assistant Attorney General, U.S. Dept. of Justice, letter to The Honorable Frank H. Murkowski, Chairman, Senate Committee on Energy and Natural Resources, January 18, 2001. Hereafter cited as *Raben Letter*.

<sup>101</sup> U.S. Constitution, Art. IV, Sec. 3.

<sup>102</sup> Puerto Rico Federal Relations Act, P.L. 81-600, 64 Stat. 319.

<sup>103</sup> In 1992, President George H.W. Bush described the relationship of the Commonwealth to the United States with regard to the administration of federal programs, as follows: “Because Puerto Rico’s degree of constitutional self-government, population, and size set it apart from other areas also subject to federal jurisdiction under Article IV, section 3, clause 2 of the Constitution, I hereby direct all federal departments, agencies, and officials, to the extent consistent with the Constitution and the laws of the United States, hence-forward to treat Puerto Rico administratively as if it were a state, except insofar as doing so with respect to an existing federal program or activity would increase or decrease federal receipts or expenditures, or would seriously disrupt the operation of such program or activity.” U.S. President (Bush), “Memorandum for the Heads of Executive Departments and Agencies,” *Federal Register*, vol. 57, December 2, 1992, p. 57093.

unilaterally changed, and establishing economic relationships with other nations.<sup>104</sup> Concepts associated with enhanced or new commonwealth have not been published in 2005, but the former governor reportedly sought additional sovereign authority that would enable Puerto Rico's government officials to negotiate international agreements and establish new intergovernmental fiscal relations with the federal government.

## **Free Association**

This option would establish Puerto Rico as a sovereign nation separate from, but legally bound (on a terminable basis) to, the United States. As a general practice, free association would be preceded by recognition that Puerto Rico is a self-governing sovereign nation not part of the United States, because compacts of free association are legal documents between sovereign nations. Free association could be accompanied by a transition period in which the United States would continue to administer certain services and provide assistance to the island for a period of time specified in the compact. Free association could be annulled at any time by either nation. Negotiations over free association would likely decide issues of trade, defense, currency, and economic aid.

## **Independence**

Some advocates of independence contend that the cultural identity of Puerto Ricans, and other factors, justify independence. As residents of a sovereign independent nation, Puerto Ricans could develop closer ties to Caribbean nations, but would likely be forced to choose between citizenship in the United States or in Puerto Rico.<sup>105</sup> The current unrestricted travel between the United States and the island might end, as would federal benefits (unless specified in the enabling legislation). Puerto Rico would, as a sovereign nation, develop its own economy, form of government, and complete national identity.

## **Statehood**

Advocates of statehood contend that the full rights and responsibilities of citizenship should be granted to residents of Puerto Rico. Political stability, particularly as an economic development tool, is seen by some to be one significant advantage of statehood. As residents of a state, Puerto Ricans would be entitled to full representation in Congress, would be subject to income taxes, and would be eligible to receive federal assistance like that provided to all of the states.<sup>106</sup> Opponents argue that statehood would result in a loss of national identity.

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<sup>104</sup> Title IV, S. 244, in U.S. Congress, Senate Committee on Energy and Natural Resources, *Political Status of Puerto Rico*, hearing on S. 244, 102<sup>nd</sup> Cong., 1<sup>st</sup> sess., January 30 and February 7, 1991 (Washington: GPO, 1991), pp. 73-101. See also H.R. 4751, 106<sup>th</sup> Congress. The Department of Justice (*Raben Letter*) found that certain aspects of a "New Commonwealth" proposal described in PDP platform documents could be, or are: "constitutionally unenforceable" or flawed (mutual consent provisions, pp. 8-10 and delegation of powers, p. 14); of uncertain legality (statutory citizenship, p. 11, and international agreements, p. 13); and possibly subject to constitutional limits (Resident Commissioner authority, p. 12).

<sup>105</sup> According to the Department of Justice, case law is not determinative as to whether citizenship would be retained if Puerto Rico gained independence. See *Raben Letter*, p. 4.

<sup>106</sup> The Department of Justice noted that, once granted statehood, Puerto Rico could not maintain differential tax treatment; its representation in Congress would affect that of the other states; and its laws and constitution might be preempted by federal statutes. See *Raben Letter*, pp. 2-3.

## Other Issues

If political status legislation were debated in Congress, the following issues, previously raised in discussions, might be subject to congressional scrutiny again.

### Effect on the U.S. Congress

If Puerto Rico were to be granted statehood, one of the most significant issues would be the impact of the 51<sup>st</sup> state on the organization and operation of Congress. Two new Senators would increase the size of the Senate to 102. A state of Puerto Rico would send approximately six Representatives to the House. Based on past precedent, congressional leaders might select among three options—(1) temporarily increasing the size of the House until the next decennial census, (2) permanently increasing the size of the House, or (3) subtracting congressional seats from other states and assigning those seats to Puerto Rico.<sup>107</sup> Depending on which option were chosen, the 50 states currently in the union would lose some degree of absolute or relative voting strength, or both. Moreover, admission of Puerto Rico might also affect the party split in each chamber of Congress.

### Language Requirement

The Federal Relations Act provision that establishes the qualification requirements for the Resident Commissioner specifies that eligible candidates must “read and write the English language.”<sup>108</sup> During the 1998 House debate on H.R. 856, an amendment was adopted that would have established an English language education requirement if Puerto Rico were admitted as a state.<sup>109</sup> See **Table C-4** of this report for the reference to the 1998 amendment on the English language requirement. There is precedent for a language requirement to be attached to a statehood proposal. The admission of three states—Oklahoma, New Mexico, and Arizona—was contingent upon such a requirement.<sup>110</sup>

### Citizenship

In 1917 Congress extended citizenship to “citizens” of Puerto Rico who were not citizens of foreign countries.<sup>111</sup> Persons born in Puerto Rico after 1941 are citizens of the United States at birth, again through federal statute.<sup>112</sup> Such “statutory” citizenship differs from “constitutional”

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<sup>107</sup> The figure of six Representatives is based on the 2000 census. That number appears unlikely to change based on estimates for 2010. For a full discussion of the potential effect of Puerto Rican statehood on apportionment of House seats, see CRS Report R41113, *Puerto Rican Statehood: Effects on House Apportionment*, by Royce Crocker.

<sup>108</sup> 48 U.S.C. 892.

<sup>109</sup> Remarks in the House, *Congressional Record*, daily edition, vol. 144, March 4, 1998, pp. H802-H812. An amendment designating Spanish as the official language of Puerto Rico was rejected during the same debate.

<sup>110</sup> Joseph E. Fallon, “Federal Policy and U.S. Territories: The Political Restructuring of the United States of America,” *Pacific Affairs*, vol. 64, spring 1991, p. 34.

<sup>111</sup> P.L. 64-368, 39 Stat. 953.

<sup>112</sup> “All persons born in Puerto Rico on or after April 11, 1899, and prior to January 13, 1941, subject to the jurisdiction of the United States, residing on January 13, 1941, in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are declared to be citizens of the United States as of January 13, 1941. All persons born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States, are citizens of the United States at birth.” 8 U.S.C. 1402.

citizenship that automatically confers upon persons born in the United States (as opposed to the areas subject to the territories clause).<sup>113</sup> If the political status of Puerto Rico changes to one of independent sovereignty, some have argued that the people of Puerto Rico should be provided the opportunity to elect between citizenship in the new nation or retention of U.S. citizenship. Congress might elect to modify the citizenship status of descendants of the people of Puerto Rico by changing the statute, but only if such legislation meets a “rational basis” test consistent with the due process clause of the U.S. Constitution.<sup>114</sup> See **Table C-4** of this report for the reference to the 1998 legislative provisions pertinent to citizenship. Some contend that dual citizenship is an option. Former Attorney General Richard Thornburgh, among others, has spoken in opposition to this option if Puerto Rico becomes a sovereign nation.<sup>115</sup> Extensive debate on the citizenship issue has been published.<sup>116</sup>

## Transition Period

If the political status of Puerto Rico changes, Congress might elect to establish a transition period during which certain elements are phased into place. Policy matters previously included in such transition periods include, for statehood: gradual modification of tax liability, language requirements, impact of representation on Congress, and others. If Puerto Rico gains independence, Congress might elect to consider a period of time in which federal financial assistance is provided, and strategic defense agreements are reached, among other matters.

## Concluding Observations

Recent activity regarding Puerto Rico’s political status—in Congress and on the island—suggests that action may be taken in the 111<sup>th</sup> Congress. The reports issued in 2007 and 2005 by the President’s Task Force on Puerto Rico’s Status may be the bases for reconsideration of the existing commonwealth status, as legislative developments during the 109<sup>th</sup> and 110<sup>th</sup> Congresses suggested. Agreement on the process to be used in considering the status proposals has been as elusive as agreement on the end result. Congress would have a determinative role in any resolution of the issue. The four options that appear to be most frequently discussed include continuation of the commonwealth, modification of the current commonwealth agreement, statehood, or independence. If independence, or separate national sovereignty, were selected, Puerto Rican officials might seek to negotiate a compact of free association with the United States.

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<sup>113</sup> “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.” U.S. Const., Amendment XIV, Sec. 1.

<sup>114</sup> See *Harris v. Rosario*, 446 U.S. 651 (1980).

<sup>115</sup> U.S. Congress, Senate Committee on Energy and Natural Resources, *Political Status of Puerto Rico*, hearings on S. 244, 102<sup>nd</sup> Cong., 1<sup>st</sup> sess., February 7, 1991 (Washington: GPO, 1991), pp. 206-207. See also U.S. Congress, Senate Committee on Energy and Natural Resources, *Separate Sovereignty or Independence for Puerto Rico*, hearing, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 23, 1998 (Washington: GPO, 1998), pp. 10-15, 21-30.

<sup>116</sup> See, for example, John L.A. de Passalacqua, “The Involuntary Loss of United States Citizenship of Puerto Ricans Upon Accession to Independence by Puerto Rico,” *Denver Journal of International Law and Policy*, vol. 19, fall 1990, pp. 139-161; Rep. Ron de Lugo, “Puerto Rico Self-Determination Act,” remarks in the House, *Congressional Record*, vol. 136, October 10, 1990, pp. 28331-8332, 28336; José Julián Alvarez González, “The Empire Strikes Out: Congressional Ruminations on the Citizenship Status of Puerto Ricans,” *Harvard Journal on Legislation*, vol. 27, summer 1990, pp. 309-365.

# Appendix A. Brief Chronology of Status Events Since 1898

**Table A-1. Summary of Status Events Since 1898**

<b>Year</b>	<b>Brief summary of events</b>
1898-1900	Spain cedes the islands of Puerto Rico to the United States at the conclusion of the Spanish-American War; U.S. military commanders govern Puerto Rico.
1900	Enactment of the first Organic Act (the Foraker Act) established a civil government headed by presidential appointees.
1917	Enactment of the Jones Act of 1917 that established a bill of rights for citizens, provided for a popularly elected Senate, authorized election of Resident Commissioner, and extended U.S. citizenship to residents of Puerto Rico. <sup>a</sup>
1947	Enactment of the Elective Governor Act. <sup>b</sup>
1950	Enabling and implementing legislation enacted for the establishment of a constitutional government. <sup>c</sup>
1952	The 82 <sup>nd</sup> Congress and President Truman approve the constitution of the Commonwealth of Puerto Rico, with amendments. <sup>d</sup>
1953	The U.S. delegate reports to the United Nations that the relationship between Puerto Rico and the United States is based upon a bilateral compact. The United Nations resolves that Puerto Rico is “an autonomous political entity” and is to be no longer considered a “Non-Self-Governing” territory. <sup>e</sup>
1964-1966	United States-Puerto Rico Commission on the Status of Puerto Rico convenes, issues reports, and recommends that a status plebiscite be held. <sup>f</sup>
1967	Plebiscite on status held, majority vote in favor of commonwealth proposal.
1975-1977	Commission report on Compact of Permanent Union between the United States and Puerto Rico issued. Legislation introduced pursuant to report recommendations, but not acted upon. <sup>g</sup>
1989-1990	101 <sup>st</sup> Congress debates status legislation; House passes (H.R. 4765) and Senate committees report (S. 712) different bills.
1996	House committees in the 104 <sup>th</sup> Congress report status legislation (H.R. 3024).
1998	House (105 <sup>th</sup> Congress) passes status legislation (H.R. 856) referred to as the Young bill; Senate does not act on comparable legislation, but approves resolution (S.Res. 279) in support of referendum.
2000	Appropriation of \$2.5 million included in Department of Transportation Appropriations Act (P.L. 106-346) for a status education campaign and a status vote.
	President Clinton issues E.O. 13183; established the President’s Task Force on Puerto Rico’s Status.
2005	The President’s Task Force on Puerto Rico’s Status issues report that sets forth recommendations for congressional action.
2006	Legislation introduced in the 109 <sup>th</sup> Congress (S. 2304, S. 2661, H.R. 4867, H.R. 4963) to initiate processes for constitutional conventions or plebiscites on status options.
2007	Legislation introduced in the 110 <sup>th</sup> Congress to initiate plebiscites (H.R. 900, S. 1936) or a constitutional convention and referendum (H.R. 1230) on status options. House Natural Resources Committee reports amended version of H.R. 900, which contains some H.R. 1230 provisions. The President’s Task Force on Puerto Rico’s status issues a second report, which reiterates the 2005 recommendations and conclusions.
2009-2010	The House Committee on Natural Resources reported out the Puerto Rico Democracy Act of 2009 (H.R. 2499) on October 8, 2009. On October 30, 2009, President Obama amended E.O. 13183 to require a report on Puerto Rico’s status within one year. On April 29, 2010, the House passed H.R. 2499.

- a. P.L. 56-191, 31 Stat. 77.
- b. P.L. 80-362, 61 Stat. 770.
- c. P.L. 81-600, 64 Stat. 319.
- d. P.L. 82-447, 66 Stat. 327.
- e. United Nations Resolution 748 (VIII), *Yearbook of the United Nations 1953* (New York: Columbia University Press, 1954), p. 539.
- f. P.L. 88-271, 78 Stat. 17.
- g. 94<sup>th</sup> Congress, H.R. 11200, S.J. Res. 215. Instead, President Ford submitted statehood legislation (H.R. 2201) that received no action.

## Appendix B. Puerto Rico Status Votes in Plebiscites and Referenda, 1967-1998

**Table B-1. Puerto Rico Status Votes in Plebiscites and Referenda, 1967-1998**

<b>Ballot Options</b>	<b>Votes</b>	
	<b>Number<sup>a</sup></b>	<b>Percent<sup>b</sup></b>
<b>July 23, 1967<sup>c</sup></b>		
Commonwealth <sup>d</sup>	425,079	60.5%
Statehood	273,315	38.9%
Independence	4,118	0.6%
Registered voters	1,067,000	
Total votes	702,512	
Percent turnout	66%	
<b>December 8, 1991<sup>e</sup></b>		
Against the reclamation of democratic rights (No)	660,267	53.6%
In favor of the reclamation of democratic rights (Yes)	559,163	45.4%
Registered voters	2,052,537	
Total votes	1,219,430	
Percent turnout	59%	
<b>November 14, 1993<sup>f</sup></b>		
Commonwealth <sup>g</sup>	826,326	48.6%
Statehood	788,296	46.4%
Independence	75,620	4.4%
Registered voters	2,100,000	
Total votes	1,700,000	
Percent turnout	81%	
<b>December 13, 1998<sup>h</sup></b>		
None of the above [option five]	787,900	50.3%
Statehood [option three]	728,157	46.6%
Sovereignty [option four, independence]	39,838	2.6%
Free association [option two]	4,536	0.3%
Limited self-government [option one] <sup>i</sup>	993	0.1%
Registered voters	2,197,824	
Total votes	1,561,424	
Percent turnout	71%	

a. Table excludes blank or null and void ballots.

- b. Number of registered voters, total votes, and percent turnout derived from sources of results (noted below), except for registered voters in 1991 calculated by CRS.
- c. Number of votes for independence calculated by CRS based on data presented in: Arturo Morales Carrion, *Puerto Rico: A Political and Cultural History*, (New York: W.W. Norton & Co., Inc., 1983), p. 306. [Total number of registered voters was 1,067,000, according to Surendra Bhana, *The United States and the Development of the Puerto Rican Status Question, 1936-1968*, (Lawrence, KS: The University Press of Kansas, 1975), p. 185.] See also Roberta A. Johnson, "The 1967 Puerto Rican Plebiscite: The People Decide," *Revista/Review InterAmericana*, vol. 5, spring 1975, pp. 27-46.
- d. The votes in favor of the 1967 Commonwealth option arguably demonstrated support for an expanded form of self-government for Puerto Rico, in that the ballot proposition included text referring to the "inviolability" and "indissoluble link" of Puerto Rican citizenship and would have required approval of changes in the political status in a referendum.
- e. Results taken from Representative Robert J. Lagomarsino, "Certification of Puerto Rico Referendum Results," remarks in the House, *Congressional Record*, vol. 138, Feb. 7, 1992, p. 2141. A "yes" vote, generally urged by commonwealth and independence supporters, expressed support for legislation that would have amended the Constitution to support the right of Puerto Ricans to determine a political status not subordinated to Congress and respective of the unique culture and identity of Puerto Rico. A "no" vote, generally urged by statehood supporters, rejected the proposed constitutional amendment.
- f. Results taken from Ivonne Garcia, "Final Status Plebiscite Results Released," *San Juan Star*, Dec. 10, 1993, p. 12.
- g. The text of the ballot for the "Commonwealth" option in 1993 included provisions that arguably exceeded the relationship established in 1950, included "irrevocable U.S. citizenship," "fiscal autonomy for Puerto Rico," and a legislative agenda to be considered by Congress.
- h. Results taken from U.S. Congress, House Committee on Resources, *The Results of the 1998 Puerto Rico Plebiscite*, committee print, 106<sup>th</sup> Congress, 1<sup>st</sup> session (Washington: GPO, 1999), p. 10.
- i. The text of the ballot arguably presented the commonwealth option in that it referred to the political status set forth in P.L. 600, the plenary authority of the Congress in the territorial clause of the U.S. Constitution, and other characteristics generally associated with the political status of Puerto Rico.

## Appendix C. Congressional Activity on Puerto Rico's Political Status, 1989-1998

During the four decades following approval of the commonwealth constitution in 1952, Congress did not act upon most legislation introduced to alter Puerto Rico's political status.<sup>117</sup> The primary exception occurred in 1964, when the 88<sup>th</sup> Congress and the legislature of Puerto Rico approved legislation that established a commission on the status issue.<sup>118</sup> From 1952 through 1988, various bills to reconsider or modify the political status of Puerto Rico were introduced, but did not receive action.<sup>119</sup> In 1975, for example, the 94<sup>th</sup> Congress considered H.R. 11200 to establish a Compact of Permanent Union, as recommended by the Ad Hoc Advisory Group for Puerto Rico, but the bill was not reported out of either the House or Senate committees of jurisdiction. In 1976, President Ford proposed statehood for Puerto Rico. For that purpose, H.R. 2201 was introduced in the 95<sup>th</sup> Congress, but received no action.

In the 101<sup>st</sup> Congress, the issue gained prominence and congressional attention, to some degree due to unified pressure from Puerto Rican elected officials.<sup>120</sup> This began a 10-year period from 1989 through 1998 (101<sup>st</sup> through the 105<sup>th</sup> Congresses) when 19 bills were introduced on the status issue. Four of the 19 bills were reported out of committee; two of those were approved by the full House. During that 10-year period, no political status bills were approved by the full Senate, but a resolution (as S.Res. 279) supporting the status referendum in 1998 did gain approval in the Senate. During the 106<sup>th</sup> Congress funds were appropriated to facilitate a popular vote (P.L. 106-346). No action was taken by the 107<sup>th</sup> or 108<sup>th</sup> Congresses on the status issue.

This appendix summarizes the provisions of the four bills that received congressional action from 1989 to 1998. It begins with four tables that facilitate comparisons of the bills. **Table C-1** provides basic information on the four bills that received action since 1989. **Tables C-2 through C-4** provide summary information on the contents of the bills. The information in these tables reflects the contents of the bills as finally acted upon.

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<sup>117</sup> The information in this appendix is limited to the time period of 1989-1998 because the most significant recent congressional action occurred during those years. This appendix will be updated to reflect congressional legislative action that involves, at a minimum, a committee's decision to report legislation.

<sup>118</sup> P.L. 88-271, 78 Stat. 18. In addition, in 1979 (96<sup>th</sup> Congress), both chambers approved a resolution (S.Con.Res. 35) affirming the commitment of Congress to the right of the people of Puerto Rico to determine their own political future.

<sup>119</sup> Also, both the House and the Senate considered concurrent resolutions limited to an expression of the sense of either or both chambers on matters related to status. This report does not consider such resolutions.

<sup>120</sup> The delivery of petitions with more than 350,000 signatures in support of statehood to Congress in the 100<sup>th</sup> Congress reportedly stimulated action.

**Table C-1. Status Legislation, 1989-1998: Summary Information**

101 <sup>st</sup> Congress		104 <sup>th</sup> Congress		105 <sup>th</sup> Congress	
H.R. 4765	S. 712	H.R. 3024		H.R. 856	
<b>Last action date</b>					
October 10, 1990	September 30, 1990	September 18, 1996		March 4, 1998	
<b>Bill title</b>					
Puerto Rico Self-Determination Act	Puerto Rico Status Referendum Act	United States-Puerto Rico Political Status Act		United States-Puerto Rico Political Status Act	
<b>Final action taken</b>					
Passed House	Reported from Committees on Energy and Finance	Reported from Committees on Rules and Resources		Passed House	
<b>Final vote</b>					
Voice vote, not recorded	Energy Committee - 11 yeas, 8 nays; Finance Committee - voice vote	Rules Committee - voice vote; Resources Committee - 10 yeas, 0 nays		209 ayes 208 nays	
<b>Report number</b>					
H.Rept. 101-790, Part I	S.Rept. 101-120; S.Rept. 101-481	H.Rept. 104-713, Parts 1&2		H.Rept. 105-131, Part I	

**Table C-2. Status Legislation, 1989-1998: Procedures**

101 <sup>st</sup> Congress		104 <sup>th</sup> Congress		105 <sup>th</sup> Congress	
H.R. 4765	S. 712	H.R. 3024		H.R. 856	
<b>Required congressional actions</b>					
Chairs of committees of jurisdiction must introduce implementing legislation	No provision	Similar to provisions in H.R. 4765, with recognition that provisions would be		Required that House and Senate majority leaders introduce legislation	

101 <sup>st</sup> Congress		104 <sup>th</sup> Congress	105 <sup>th</sup> Congress
H.R. 4765	S. 712	H.R. 3024	H.R. 856
by March 6, 1992; expedited process for consideration of the legislation set out. §5		considered part of House and Senate rules, with allowance for rule changes. §6	and that committees report bill (or automatic discharge be implemented), and established expedited procedures. §6
<b>Status options specified</b>			
Independence, statehood, “a new commonwealth relationship,” and, none of the above. §2(a)	Statehood, Independence, Commonwealth	Continue present commonwealth, separate sovereignty or U.S. sovereignty through (a) independence or free association or (b) statehood. §4(a)	Retain commonwealth, separate sovereignty through (a) independence or (b) free association, or statehood. §4(a)
<b>Requirements for referendum</b>			
Initial referendum would be held on September 16, 1991, or later date as agreed by specified committee. Second referendum (ratification vote) would be held on implementing legislation. §2(a), §6(a)	Initial referendum would be held on June 4, 1991, or later date during summer of 1991 as mutually agreed by the 3 political parties. §101(b)	Referendum would be held no later than Dec. 31, 1998. §4(a)	Same as H.R. 3024
<b>Participation of mainland residents in vote</b>			
Government of Puerto Rico authorized to enable nonresident Puerto Ricans to register and vote in the referendum. §2(b)	No provision, but provided that general election laws would apply. §101(d)	No provision, but provided that general election laws would apply, including voting eligibility. §4(a), 5(a)	Same as H.R. 3024. §4(a), 5(a)
<b>Resolution of inconclusive vote by Puerto Rican residents</b>			
If a majority of voters did not approve one of the 3 status options or the implementing legislation not effectuated, members of committees of jurisdiction would have to make recommendations. §7	If a majority of voters did not approve one of the 3 status options, a runoff referendum would be held on 2 options receiving the most votes, including “none of the above.” §101(c)	The President and others would have had to recommend action within 180 days; existing commonwealth structure would have remained, with subsequent referenda held every four years. §5(c)	Same as H.R. 3024. §5(c)

101 <sup>st</sup> Congress		104 <sup>th</sup> Congress		105 <sup>th</sup> Congress	
H.R. 4765	S. 712	H.R. 3024		H.R. 856	
<b>Provision for transition period</b>					
No provision in legislation, but “Independence” definition in report provided for a transition period of at least 10 years for economic stability and demilitarization. Also, statehood option included transition provision. <i>H.Rept. 101-790, Part I</i> , pp. 21-22.	Under statehood, Medicare, food stamp, and tax policies continued as specified. §213 Under independence, a Joint Transition Committee would have been established. §305, §313-318	If a majority of voters approved the “self-government” option, the President would have had to develop a transition plan of at least 10 years to lead to full self-government, and local legislature would have been authorized to call a constitutional convention. §4(b)		Similar to H.R. 3024, but transition plan would have had to include English language provisions, with transition plan of no more than 10 years. §4(b)	
<b>Funding for referendum</b>					
Authorized \$13.5 million for the referendum. §2(b)	No provision	Grants for the costs of the referenda and for voter education provided from excise tax collections on imported rum. §7		Same as H.R. 3024. §7	
<b>Judicial review</b>					
No provision	Local laws and procedures dictated adjudication, with specified provisions for challenging vote irregularities. §101(e)	No provision		No provision	
<b>Required threshold for referendum vote</b>					
Majority for one of the 3 options. §4	Majority for one of the 3 options. §101(c)	Majority of “valid votes cast.” §4(a)		Same as H.R. 3024. §4(a)	
<b>Requirement for presidential action</b>					
President would have had to consult with members of committees with jurisdiction and others on implementing legislation. §4, 7	Under independence, the President must surrender rights of possession and control, provide notice to foreign governments. §307, 310	See transition period and inconclusive vote comments, above. Also, President would have had to submit legislation for self-government transition. §4c		Same as H.R. 3024. §4c	

**Table C-3. Status Legislation, 1989-1998: Options**

<b>101<sup>st</sup> Congress</b>		<b>104<sup>th</sup> Congress</b>		<b>105<sup>th</sup> Congress</b>	
<b>H.R. 4765</b>	<b>S. 712</b>	<b>H.R. 3024</b>	<b>H.R. 856</b>		
<b>Statehood</b>					
Admitted on footing equal to all states, with citizenship and national voting rights guaranteed. §2 <sup>a</sup>	Admitted on footing equal to all states: territorial boundaries and land claims addressed; provision for national representation; effectiveness of existing laws provided for, as well as continuation of pending suits. See transition period, above. <i>Title II</i>	Provision for: guaranteed constitutional rights, permanent union, reserved powers, responsibility for payment of taxes, national representation and voting rights, and application of language requirement similar to that applied in other states. §4(a)	Similar provision to H.R. 3024, with official English language requirement specified. §4(a)		
<b>Commonwealth</b>					
No provision	No provision; see “Enhanced commonwealth”	Continuation of present commonwealth structure, with relationship dissolvable only by mutual consent, citizenship secured by U.S. Constitution, federal benefits equal to states contingent on tax payments. §4(a)	Continuation of present commonwealth structure. Congress would have retained authority to set policy and decide ultimate status through process that would have required periodic referenda. §4(a)		
<b>Enhanced Commonwealth</b>					
Permanent relationship with U.S., but not incorporated. Federal benefits equal to states contingent on contributions, and possible autonomy in international relations. §2 <sup>a</sup>	Authorized governor and legislature to identify federal laws and regulations not applicable to Puerto Rico and provided for congressional or executive review. Revised other areas of policy such as trade and air transportation agreements. <i>Title IV</i>	No provision	No provision		
<b>Free association</b>					
No provision	No provision	See “Independence,” below.	See “Independence,” below.		

<b>101<sup>st</sup> Congress</b>		<b>104<sup>th</sup> Congress</b>	
<b>H.R. 4765</b>	<b>S. 712</b>	<b>H.R. 3024</b>	<b>H.R. 856</b>
<b>Independence</b>			
Establishment of republican form of government through a constitution. §2 <sup>a</sup>	Establishment of constitution for a republican form of government. Effect of independence on existing laws provided for, along with defense, land holdings, and other areas. See transition period, above. <i>Title III</i>	Separate sovereignty through independence or free association characterized by: full authority for internal and external affairs, treaty or bilateral pact terminable by either nation, adoption of a constitution for a republican form of government, diplomatic recognition, trade based on treaty, and other provisions. §4(a)	Similar provision to H.R. 3024. §4(a)
<b>None of the above</b>			
Identified as a valid option on the referendum ballot. §2 <sup>a</sup>	No provision, but if a runoff referendum had been required, this option would have to have been on the ballot. §101(c)	No provision	No provision

a. The bill did not include definitions for these terms. Instead, the report accompanying the legislation (H.Rept. 101-790, Part I, pp. 21-22) set out definitions of each of the three options. Section 4(a) of the bill would have required that these definitions be considered by committees charged with drafting the implementing legislation.

**Table C-4. Status Legislation, 1989-1998: Substantive Issues**

<b>101<sup>st</sup> Congress</b>		<b>104<sup>th</sup> Congress</b>		<b>105<sup>th</sup> Congress</b>	
<b>H.R. 4765</b>	<b>S. 712</b>	<b>H.R. 3024</b>	<b>H.R. 856</b>		
<b>Citizenship</b>					
No provision	Under statehood, would not confer, terminate, or restore U.S. nationality. §212	Under separate sovereignty, U.S. nationality and citizenship would have been terminated, but those with citizenship before separation would have retained it for life, as specified. §4(a)	Under statehood, citizenship would have been guaranteed. §4(a)	Similar provision to H.R. 3024.	
<b>Language requirements</b>					
No provision	No provision	Under statehood, would have followed the language requirements "as in the several states." §4(a)	Stated as policy that students in schools should achieve English proficiency by age 10. §3(c)	Under statehood, official English language requirements would have applied in Puerto Rico as in all states. §4(d)	Transition plan to statehood would have had to include promotion of English. §4(b)
<b>Referendum funding</b>					
Authorized \$13.5 million to be appropriated—\$7.5 million for the referendum, \$6 million for voter education. §2(a,b)	No provision	Collections from rum import tax to be transferred, in amounts specified by the President, half for referenda costs and half for voter education. §7	Similar provision to H.R. 3024. §7		

101 <sup>st</sup> Congress		104 <sup>th</sup> Congress		105 <sup>th</sup> Congress	
H.R. 4765	S. 712	H.R. 3024		H.R. 856	
<b>Land use and transfer</b>					
No provision	<p>Under statehood, would have retained U.S. title over held lands and required review of such holdings. §204, 205, 211</p> <p>Under independence, property rights would have been safeguarded (§302(c)), and land use by the military would have been negotiated. §312</p> <p>Under commonwealth, would have required review of 8 specific parcels and commission oversight of San Juan National Historic Site. §412-413</p>	No provision		No provision	
<b>Congressional representation</b>					
No provision	<p>Under statehood, would have required election of two Senators as well as the number of representatives to be allocated to the new state under the 1990 census, with an increase in the size of the House. §206, 207</p> <p>Under commonwealth, would have established the Office of Senate Liaison. §409</p>	<p>Under statehood, would have assured representation by 2 Senators and Representatives “proportionate to the population.” §4(a)</p>		Similar provision to H.R. 3024. §4a	
<b>Litigation and judicial review</b>					
No provision	<p>Legal challenges associated with the referendum would have been adjudicated by a 3-judge court, as specified. §101(e)</p> <p>Under statehood, pending litigation would have continued, as would appeal rights. §209, 210</p> <p>Under independence, pending proceedings would have been transferred, except for those on appeal. §309</p>	<p>Under independence or free association, employment and property rights would have continued to be honored, §4(a)</p>		Would have maintained previously vested rights to benefits. §4(a)	

101 <sup>st</sup> Congress		104 <sup>th</sup> Congress		105 <sup>th</sup> Congress	
H.R. 4765	S. 712	H.R. 3024		H.R. 856	
<b>Trade</b>					
No provision	Under independence, the transition commission would have had to establish a task force to develop policy. §316  Under commonwealth, would have authorized Puerto Rico to impose tariff duties on imports, among other provisions. §406	No provision		No provision	

## Appendix D. Summary of Legislative Debates and Actions

### 101<sup>st</sup> Congress

During the 101<sup>st</sup> Congress, the House and the Senate considered status bills, but could not reconcile the differences. The House passed legislation (H.R. 4765) that would have mandated that a referendum be held in 1991. Upon selection of a status option by the voters, Congress would have been required to consider implementing legislation in accordance with a specified timetable. By comparison, the Senate Committees on Energy and Natural Resources and on Finance reported out a bill (S. 712) that would have been self-executing (i.e., the status of Puerto Rico would have been resolved after a referendum, with no further congressional action required). The full Senate did not vote on S. 712.<sup>121</sup>

Several reasons have been cited for the decision by the Senate not to approve S. 712 and the inability of the 101<sup>st</sup> Congress to reconcile the differences between the two bills. The chairman of the Senate Energy and Natural Resources Committee questioned the utility of the definitions in the report that accompanied H.R. 4765 and noted that the debate could not be concluded with the short time that remained in the 101<sup>st</sup> Congress.<sup>122</sup> S. 712 was perceived by some to be biased toward statehood in that it would have provided for an immediate transition to statehood and would have applied federal benefits immediately to Puerto Rico, but would have delayed tax payment responsibilities. Some Senators did not want to take action in the absence of a petition from Puerto Ricans on statehood. Also, the bill included few of the enhancements sought by the Popular Democratic Party (PDP). Perhaps most significantly, sponsors of the bills could not reconcile the gap between the self-executing provisions of S. 712 and the provision for congressional consideration of implementing legislation in H.R. 4765.<sup>123</sup>

### S. 712

Several catalysts stimulated congressional action on the status issue in the 101<sup>st</sup> Congress. Some members sought to continue discussions initiated over legislation introduced, but not acted upon, during the previous Congress (H.R. 2849, S. 1182). The submission of petitions with over 350,000 signatures to Congress from 1985 through 1987 brought greater prominence to the issue. Also, in his 1989 inaugural address, Puerto Rico's Governor Rafael Hernández Colón proposed that a referendum be held on status options, including enhanced commonwealth. Shortly thereafter, the presidents of the other two political parties agreed to the referendum proposal. As noted in a House committee report, "The agreement was viewed as historic because the three

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<sup>121</sup> Many of the documents considered during debate on S. 712 and H.R. 4765 have been collected in Puerto Rico Federal Affairs Administration, *Political Status Referendum, 1989-1991* (Washington: 1992). For a chronology of events associated with the debate, see vol. 1, pp. xxiv-xxxii.

<sup>122</sup> Sen. Bennett Johnston, "Puerto Rican Statehood," remarks in the Senate, *Congressional Record*, vol. 136, October 10, 1990, p. 28173.

<sup>123</sup> Rep. Ron de Lugo, "Puerto Rico Self-Determination Act," remarks in the House, *Congressional Record*, vol. 136, October 10, 1990, p. 28313. See also, "Puerto Rico's Status Remains Unresolved," *Congressional Quarterly Almanac*, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., (Washington: Congressional Quarterly, Inc., 1990), pp. 424-427.

parties had long disagreed on the proper approach to resolving the status issue.”<sup>124</sup> The leaders of the three principal political parties in Puerto Rico wrote to the chairman of the Senate Energy and Natural Resources Committee requesting congressional action on status. An excerpt from the letter follows:

the People of Puerto Rico wish to be consulted as to their preference with regards to their ultimate political status and the consultation should have the guarantee that the will of the People once expressed shall be implemented through an act of Congress which would establish the appropriate mechanisms and procedures to that effect.<sup>125</sup>

One month later, President George H. W. Bush raised the topic before Congress in his first State of the Union message:

There’s another issue that I’ve decided to mention here tonight. I’ve long believed that the people of Puerto Rico should have the right to determine their own political future. Personally, I strongly favor statehood. But I urge the Congress to take the necessary steps to allow the people to decide in a referendum.<sup>126</sup>

On April 5, 1989, the chairman of the Senate Energy and Natural Resources Committee (Senator J. Bennett Johnston) and the ranking Member (Senator Frank McClure) introduced three bills, each of which provided for a referendum on the political status issue. S. 712, the more detailed of the three bills, was reported from two of the three committees to which it was referred.<sup>127</sup> No action was taken on the other two bills.<sup>128</sup>

As reported, S. 712 contained the text for each option that was to be placed on the referendum ballot, along with details on the potential effect of each option on matters such as intergovernmental relationships, disposition of federal property, federal financial assistance, economics and trade, citizenship, and immigration. The bill provided for a runoff referendum if no single option received a majority of votes.

The statehood provision of S. 712 (Title II) included a self-executing provision; recognized the constitution adopted in 1952 as the constitution (future) of the state; retained existing federal land holdings (with future conveyances allowed); recognized both Spanish and English as official languages (with government proceedings conducted in English); and provided for the election of presidential electors and congressional representatives, as well as the establishment of a commission to identify U.S. laws not applicable to Puerto Rico, among other provisions.

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<sup>124</sup> U.S. Congress, House Committee on Interior and Insular Affairs, *Puerto Rico Self-Determination Act*, report to accompany H.R. 4765, H.Rept. 101-790, Part 1, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1990), p. 13.

<sup>125</sup> Sen. J. Bennett Johnston, remarks in the Senate, *Congressional Record*, daily edition, vol. 135, March 16, 1989, p. 4526.

<sup>126</sup> U.S. President (Bush), “Address on Administration Goals before a Joint Session of Congress,” *Public Papers of the Presidents of the United States*, Book I (Washington: GPO, 1989), p. 78.

<sup>127</sup> The Senate Agriculture Committee did not report out the bill.

<sup>128</sup> S. 710 and S. 711 were each considerably shorter than S. 712, which totaled 58 pages. S. 710, three pages total, described the three status options in very brief terminology (e.g., “Independence with full economic guarantees”) and called for negotiations among the political parties of Puerto Rico to develop implementing legislation. S. 711, 24 pages total, contained more detailed “Initial Definitions” of the status options, a self-executing clause for the statehood option (if selected by voters), descriptions of the relationship of the U.S. to Puerto Rico under the commonwealth and independence options, and future enhancements to the commonwealth status (if selected by voters).

The independence option described in Title III called for a constitutional convention and set out basic requirements for such a constitution. The bill would have provided for the transition of authority from the United States to the Republic of Puerto Rico through a Joint Transition Commission and would have required the President, once specified steps had been taken, to recognize the independence of Puerto Rico. The bill would not have affected the citizenship of any person born prior to certification of the referendum results, but would have prohibited the extension of citizenship to those born to parents who were U.S. citizens solely because they were born in Puerto Rico. In addition, the bill called for the negotiation of national security matters, continuation of federal financial assistance (in amended form) for nine years, the permanent continuation of pension and civil service benefits, and negotiations on the continuation of Social Security and Medicare benefits.

Title IV, which set forth the commonwealth option, recognized Puerto Rico as a “self-governing body politic joined in political relationship with the United States and under the sovereignty of the United States.” The bill also provided for enhanced commonwealth status to stimulate economic development. This provision would have allowed elected officials in Puerto Rico, through joint resolutions, to exempt the commonwealth from the applicability of certain federal laws, pursuant to specified procedures. International agreements consistent with the laws and obligations of the United States could have been entered into by the governor of Puerto Rico. Also, the governor could have been authorized to notify federal agencies of the inconsistency of proposed rules with commonwealth policy, with resultant actions specified. The bill also would have authorized the commonwealth to impose tariff duties on foreign imports, encouraged consultation with the governor of the commonwealth concerning tariff changes, and required consultation with local officials in filling specified federal offices in Puerto Rico. In addition, the bill would have established a liaison office in the Senate and established a passport office in Puerto Rico, exempted certain television broadcast agreements from federal antitrust laws, and facilitated the review of federal property exchange.

*Issues of Debate on S. 712.* The debate on S. 712 resulted in the discussion of many facets of the status debate. Hearings were held by three committees to obtain public comments, the viewpoints of Administration officials, and statements from political leaders in Puerto Rico.

The Senate Committee on Energy and Natural Resources, the primary committee of jurisdiction, held eight days of hearings on S. 712.<sup>129</sup> During these hearings, Senators and witnesses discussed a range of issues raised by the status debate, including the following: the referendum process (including campaign financing, voting rights of mainland Puerto Ricans, and ballot components); continuation of citizenship rights; language requirements; constitutional provisions; international relations; trade; transition requirements (including modifying standing tax benefits and continued federal aid); transfer of historic and other property; financial and economic development matters; judiciary concerns (including official language for court proceedings, appointment of judges, and jurisdiction); fisheries and mineral rights; national defense and security; and other matters.

In addition, the Senate Committee on Agriculture held a hearing on nutrition and food purchase assistance.<sup>130</sup> Discussion ensued in the hearing on the Nutrition Assistance Program (NAP),

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<sup>129</sup> U.S. Congress, Senate Committee on Energy and Natural Resources, *Political Status of Puerto Rico*, hearings on S. 710, S. 711, and S. 712, 101<sup>st</sup> Cong., 1<sup>st</sup> sess., June 1 and 2 (Part 1), June 16-18 (Part 2), July 11, 13-14 (Part 3), 1989 (Washington: GPO, 1989).

<sup>130</sup> U.S. Congress, Senate Committee on Agriculture, Nutrition, and Forestry, *Puerto Rico Status Referendum Act—S. 712*, hearing on S. 712, 101<sup>st</sup> Cong., 1<sup>st</sup> sess., November 9, 1989 (Washington: GPO, 1991), p. 272.

instituted in 1982. The NAP replaced the food stamp benefits previously provided to Puerto Rico with a block grant administered by the government of Puerto Rico. The legislation authorized Puerto Rico to exercise greater flexibility in designing a program to provide assistance to low-income families. Witnesses at the hearing spoke on how a change in status would affect recipients of such assistance.

The Senate Committee on Finance held three days of hearings on S. 712 to discuss perceptions of the status alternatives and projected cost implications of a status change.<sup>131</sup> Federal benefits, economic indicators, and interpretations of the bill received attention in the hearings. In particular, discussion occurred on the future of the Section 936 tax benefit, notably whether it would be constitutional, under the Uniformity Clause of the U.S. Constitution,<sup>132</sup> for a new State of Puerto Rico to enjoy a tax benefit not extended to other states. In addition to information presented in the hearing documents, the Senate Committee on Finance prepared a committee print that summarized tax provisions related to Puerto Rico and the relevant provisions of S. 712. The report also set out tax implications of the legislation for each of the three status options.<sup>133</sup>

According to one summary of the debate in Congress, tax treatment of Puerto Rico and the cost implications of independence and statehood complicated Senate consideration of S. 712.<sup>134</sup> Some Senators questioned the quality of Treasury Department statistics that projected net revenue gains to the U.S. from statehood or independence. In addition, the issue of representation in Congress arose. Debate centered on whether to increase the size of the House or to reapportion the 435 seats, in addition to the bill's provision for a "shadow," or non-voting, Senator. Commonwealth supporters reportedly perceived the bill to be biased toward statehood, particularly the provision that would have provided financial benefits from statehood in the early years, with increased tax burdens reserved for later years. Finally, the impact of the legislation on proposals to grant statehood to the District of Columbia, including the appointment of a shadow Senator, affected debate.

The Energy and Natural Resources Committee reported S. 712 on August 6, 1989, by a vote of 11 ayes to 8 nays, with a recommendation that the bill be approved. The Finance Committee reported S. 712 on August 30, 1989, but did not include a recommendation on whether the bill should be approved.<sup>135</sup> No further action occurred.

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<sup>131</sup> U.S. Congress, Senate Committee on Finance, *Puerto Rico's Political Status*, hearing on S. 712, 101<sup>st</sup> Cong., 1<sup>st</sup> sess., November 14-15, 1989 (Part 1), April 26, 1990 (Part 2) (Washington: GPO, 1990).

<sup>132</sup> Art. I, Sec. 8, cl. 1 reads: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises ... but all Duties, Imposts and Excises shall be uniform throughout the United States;"

<sup>133</sup> U.S. Congress, Senate Committee on Finance, prepared by staff of the Joint Committee on Taxation, *Tax Rules Relating to Puerto Rico Under Present Law and Under Statehood, Independence, and Enhanced Commonwealth Status (S. 712, Puerto Rico Status Referendum Act)*, joint committee print (Washington: GPO, 1989), p. 51.

<sup>134</sup> For a summary, see "Puerto Rico Statehood Considered in Senate," in *Congressional Quarterly Almanac, 101<sup>st</sup> Congress, 1<sup>st</sup> Session, Vol. XLV* (Washington: Congressional Quarterly, Inc., 1989), pp. 356-361.

<sup>135</sup> U.S. Congress, Senate Committee on Energy and Natural Resources, *Puerto Rico Status Referendum Act*, report to accompany S. 712, 101<sup>st</sup> Cong., 1<sup>st</sup> sess., S.Rept. 101-120 (Washington: GPO, 1989), p. 70. U.S. Congress, Senate Committee on Finance, *Puerto Rico Status Referendum Act*, report to accompany S. 712, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 101-481 (Washington: GPO, 1989), p. 55.

## **H.R. 4765**

Dissatisfaction with the Senate's approach led to preparation of alternative legislation in the House.<sup>136</sup> H.R. 4765, introduced by Representative de Lugo on May 9, 1990, resembled S. 711, one of the Senate bills not acted upon by the Senate committees.

As passed by the House on October 10, 1990, H.R. 4765 would have authorized \$13.5 million for a referendum to be held on September 16, 1991. The bill included four voting options to be presented in the referendum—"independence," "statehood," "a new commonwealth relationship," and "none of the above." If a majority of voters in the referendum had selected one of the three status options, the committees of jurisdiction, in consultation with the principal parties of Puerto Rico and others, would have been required to draft implementing legislation within time frames specified in the legislation.<sup>137</sup> Once it was drafted, both chambers would have been required to meet a series of deadlines for expedited action to debate the legislation in each chamber.

While the bill did not include definitions and characteristics of the three status options, the report accompanying the legislation did.<sup>138</sup> The basic elements of the options, as presented in the House report, are summarized below:

- (1) The report accompanying the legislation required that, if independence received the majority of votes, a constitution establishing a republican form of government be drafted, with a transition period of at least 10 years to provide for financial assistance and commerce incentives. Citizens of the United States born before the date of independence would have retained their citizenship; demilitarization would have been considered, and the President would have been authorized to negotiate agreements with the new republic.
- (2) The statehood option would have provided for the admission of Puerto Rico as a state, with all rights and obligations of the other states extended to Puerto Rico. The citizenship of persons born in Puerto Rico would have been "constitutionally guaranteed," and voting rights in presidential elections, representation in Congress, and benefits and obligations would have been extended to residents of the new state. Also, Congress would have provided for a "reasonable and fair" transition of the economy under statehood.
- (3) The new commonwealth relationship would have been permanent and only alterable through mutual consent. The new commonwealth would have been "an autonomous body politic with its own character and culture" exercising sovereignty over matters governed by the Puerto Rican constitution, consistent with the U.S. Constitution. U.S. citizenship of those born in Puerto Rico would have been guaranteed in accordance with the Fifth Amendment and would have been equal to that granted to citizens born in the United States. All "rights,

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<sup>136</sup> See comments of the sponsor of the H.R. 4765, Rep. Ron de Lugo, remarks in the House, *Congressional Record*, daily edition, vol. 136, October 10, 1990, p. 28314. See also U.S. Congress, House Committee on Interior and Insular Affairs, *Puerto Rico Self-Determination Act*, report to accompany H.R. 4765, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 101-790, Part I (Washington: GPO, 1990), pp. 13-14.

<sup>137</sup> U.S. Congress, House Committee on Interior and Insular Affairs, *Puerto Rico Self-Determination Act*, report to accompany H.R. 4765, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 101-790, Part I (Washington: GPO, 1990), p. 39.

<sup>138</sup> The Resident Commissioner of Puerto Rico, in an additional viewpoint appended to the report, considered the definitions in the report "morally and politically binding."

privileges, and immunities” set forth in the U.S. Constitution would have applied. Federal benefits equal to those provided in other states would have been assured, contingent upon equitable contributions being made. Proposals for international agreements would have been presented to Congress and the President, with both branches determining the outcome of the proposals.

*Issues of Debate on H.R. 4765.* Compared to the official record of debate on S. 712, that for H.R. 4765 is scant. The nearly unanimous approval of H.R. 4765 by the Committee on Interior and Insular Affairs (37 ayes to 1 nay) reportedly “represented a hard-won compromise between committee members who favored widely different options.”<sup>139</sup> Differences among Members, Administration officials, and Puerto Rico’s leaders were resolved prior to the committee vote. As noted by the floor manager for the legislation during the debate on the House floor, “The substitute before the House was worked out in months of negotiations with the White House and Puerto Rico’s parties.”<sup>140</sup>

No statements in opposition to the legislation were made on the floor of the House, and the bill passed under suspension of the rules.<sup>141</sup> However, certain issues mentioned by some Members of Congress during the floor debate provided an indication of the issues under discussion. These included the expedited implementation procedures (which overrode normal rules of the House), the scope of the status options in the House report, the absence of a provision protecting the language and culture of Puerto Ricans, participation of nonresidents in the plebiscite, the option of including self-executing provisions, and judicial consideration of cases relating to the referendum.

## **102<sup>nd</sup> Congress**

Relatively little action occurred on the status issue during the 102<sup>nd</sup> Congress. Senator Johnston introduced legislation (S. 244) that, unlike the self-executing text in S. 712 as reported in the 101<sup>st</sup> Congress, provided that Congress would consider implementing legislation subsequent to a referendum. Following adoption of that legislation by Congress, a second vote would have been held in Puerto Rico to ratify the implementing legislation. S. 244 was not reported out of committee for a variety of reasons, including projected costs, disagreement over the role of Congress in the status debate, and concern over language and cultural differences.<sup>142</sup> Status legislation in the House (H.R. 316) that was similar to H.R. 4765 in the previous Congress also received no action.

## **103<sup>rd</sup> Congress**

Three concurrent resolutions (H.Con.Res. 94, H.Con.Res. 300, and S.Con.Res. 75) were introduced in the 103<sup>rd</sup> Congress on the status issue. The House Resources Committee held a

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<sup>139</sup> “Puerto Rico’s Status Remains Unresolved,” *Congressional Quarterly Almanac*, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess. (Washington: Congressional Quarterly, Inc., 1990), p. 426.

<sup>140</sup> Rep. Ron de Lugo, remarks in the House, *Congressional Record*, daily edition, vol. 136, October 10, 1990, p. 28309.

<sup>141</sup> The debate is found in *ibid.*, pp. 28307-28337.

<sup>142</sup> “No Progress Made on Puerto Rico Plebiscite,” *Congressional Quarterly Almanac*, 102<sup>nd</sup> Congress, 1<sup>st</sup> Session, Vol. XLVII (Washington: Congressional Quarterly, Inc., 1991), pp. 184-185.

hearing on H.Con.Res. 94, a resolution expressing congressional endorsement that Puerto Ricans had the right of self-determination.<sup>143</sup> No other actions were taken on any of the three resolutions.

In light of the lack of progress on the issue in Congress, Governor Pedro Rosselló and the legislature of Puerto Rico agreed to authorize a plebiscite on status. The second plebiscite on Puerto Rico's political status was held on November 14, 1993, as discussed previously in this report.

## **104<sup>th</sup> Congress**

On December 14, 1994, the legislature of Puerto Rico approved a concurrent resolution that called on the 104<sup>th</sup> Congress to act on the 1993 plebiscite. Subsequently, during the 104<sup>th</sup> Congress (1995-1996), action was taken on one political status bill. The House Committees on Resources and Rules reported legislation (H.R. 3024) that would have authorized a referendum, a transition period, and implementation mechanisms on the status issue. Opposition to the legislation focused on the definition of "commonwealth" in the bill, the proposed referendum process, and the transition mechanism.<sup>144</sup> The House did not act on the reported bill.

In response to the concurrent resolution approved by the Puerto Rican legislature in December 1994, two House subcommittees with jurisdiction held a hearing.<sup>145</sup> The subcommittees received statements from the major political leaders in Puerto Rico and others. Subsequently, three House chairmen and one subcommittee chairman with jurisdiction over Puerto Rico sent a letter to the leaders of the Puerto Rican legislature on February 29, 1996. The letter noted the Members' disagreement with the terms and definitions of "commonwealth" that were included on the 1993 ballot and affirmed that Congress must define the "real options for change and the true legal and political nature of the status quo, so that the people can know what the actual choices will be in the future." The letter ended with the notation that "The question of Puerto Rico's political status remains open and unresolved."<sup>146</sup>

### **H.R. 3024**

On March 6, 1996, the chair of the House Resources Committee introduced H.R. 3024 to provide for a referendum to be held no later than December 31, 1998. The bill would have required that the ballot present two "paths" before the voters—(1) continuation of the existing status arrangement or (2) a selection between independence or free association or U.S. sovereignty leading to statehood. Under independence or free association, treaties or bilateral pacts would have governed in areas of shared interest between the two nations; Congress would have

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<sup>143</sup> U.S. Congress, House Committee on Natural Resources, Subcommittee on Insular and International Affairs, *Puerto Rico Self-Determination Part I and II*, hearings, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess., July 13, 1993 (Washington: GPO, 1994), pp. 194, 232.

<sup>144</sup> "Puerto Rico Status," *Congressional Quarterly Almanac, 104<sup>th</sup> Congress, 2<sup>nd</sup> Session, Vol. LII* (Washington: Congressional Quarterly, Inc., 1996), pp. 3-8.

<sup>145</sup> U.S. Congress, House Committee on Resources, Subcommittee on Native American and Insular Affairs, and House Committee on International Relations, Subcommittee on the Western Hemisphere, *Puerto Rico Status Plebiscite*, hearing, 104<sup>th</sup> Cong., 1<sup>st</sup> sess., October 17, 1995 (Washington: GPO, 1996), p. 377.

<sup>146</sup> Statement of Rep. Don Young, remarks in the House, *Congressional Record*, daily edition, vol. 142, March 6, 1996, p. E299.

established citizenship criteria for retention of citizenship; and aid would have been provided as determined by Congress and the President.

The bill set out three stages to be followed in the status determination process. (The three transition stages would have required actions to be taken over a span of roughly 14 years.) First would have been an initial decision stage for the two questions to be placed before Puerto Rican voters. Second would have been a transition stage that would have required the President, within six months of certification of ballot results, to submit legislation to establish a 10-year transition plan, allow for expedited congressional consideration of the plan, and a second referendum before the people of Puerto Rico on the transition plan approved by the President and the Congress.

Third would have been an implementation stage that, no less than two years before the end of the 10-year transition plan, would have required expedited congressional approval of a presidential proposal for self-government under the preferred status option. Following approval of this plan by Congress and the President, a third referendum would have been held, with majority approval required for the results to be considered valid. Should any of the referenda have proven inconclusive, the existing commonwealth form of government would have continued. The bill would have authorized grants to be provided by the President for the referenda and for voter education.

Following a hearing on the bill that was held in Puerto Rico,<sup>147</sup> sponsors sought to revise H.R. 3024 to include a third path on the ballot—enhanced commonwealth. If approved by voters, the revision would have specified a guarantee of irrevocable citizenship, fiscal autonomy for Puerto Rico, and other benefits.<sup>148</sup> This amendment was rejected in subcommittee on June 12, 1996.

On July 26, 1996, the Committee on Resources reported out the legislation. As reported, the bill would have modified the initial decision stage in the original bill by placing the following options before voters: continuation of “the present Commonwealth structure,” self-government through either independence or free association, or sovereignty leading to statehood. The second, or transition, stage was amended to authorize the legislature of Puerto Rico to call for a constitutional convention if a vote for separate sovereignty prevailed in the referendum.

*Issues of Debate on H.R. 3024.* During the March 1996 hearing in San Juan, Puerto Rico, leaders of the statehood, commonwealth, and independence factions spoke to the interpretation of the referendum held on November 14, 1993, and the legislation before the subcommittee. Discussion during the hearing centered on the definition of “commonwealth,” the differences in culture and language between Puerto Rico and the United States, and standards established by the United Nations on decolonization.<sup>149</sup>

In June 1996, during subcommittee and committee debate on the legislation, some Members of Congress considered amendments that would have altered components of the bill. Most were rejected, including an amendment that would have placed the option of enhanced commonwealth,

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<sup>147</sup> U.S. Congress, House Committee on Resources, *U.S.-Puerto Rico Political Status Act*, hearing on H.R. 3024, 104<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 23, 1996 (Washington: GPO, 1996), p. 249.

<sup>148</sup> Refer to statement of Rep. Elton Gallegly, remarks in the House, *Congressional Record*, daily edition, vol. 142, June 4, 1996, pp. E988-E989.

<sup>149</sup> See U.S. Congress, House Committee on Resources, *U.S.-Puerto Rico Political Status Act*. Because the hearing was held in San Juan, a number of witnesses replied in Spanish to Members’ questions. As a result, while all prepared statements included in the hearing record are in English, a considerable amount of information on witnesses’ viewpoints is presented solely in Spanish.

as approved by a plurality of those voting in the referendum, in the legislation.<sup>150</sup> Another rejected amendment would have revised the process set forth in the legislation by separating statehood and independence, instead of combining them in one option to be subsequently differentiated in another question. Still another amendment would have replaced the transition period of a decade with immediate effectuation after the results of the referendum were tabulated. Amendments that were adopted included a continuation of commonwealth status on the ballot (a definition opposed by the PDP) and continued referenda every four years “until Puerto Rico’s unincorporated territory status is terminated in favor of a recognized form of full self-government in accordance with this Act.”

The House Committee on Rules reported out the bill in September 1996, in the closing days of the 104<sup>th</sup> Congress, and amended Section 6 of the bill concerning expedited congressional consideration of the legislation specified in H.R. 3024. No further action was taken on H.R. 3024 during the 104<sup>th</sup> Congress.

## **105<sup>th</sup> Congress**

As in the 104<sup>th</sup> Congress, the primary action on the status issue took place only in the House. The chairman of the House Resources Committee introduced H.R. 856, the United States-Puerto Rico Political Status Act, on February 27, 1997. The bill, in amended form, was reported out of committee in a near unanimous vote (44 ayes to 1 nay) on June 12, 1997. On March 4, 1998, the bill was debated on the floor of the House and was approved by a one-vote margin. No action occurred in the Senate on the bill, but a resolution (S.Res. 279) was adopted that acknowledged Senate support for a plebiscite in Puerto Rico.

### **H.R. 856**

The text of H.R. 856 was comparable to H.R. 3024 considered during the previous Congress. H.R. 856, like its predecessor legislation, included definitions of the status options and provided for a three-stage process—initial decision, transition, and implementation, with the transition period for separate sovereignty or statehood lasting no more than 10 years. Debate among Members of the House and the Administration resulted in considerable changes intended to meet the objections of supporters of the commonwealth arrangement.

Some provisions differed between the two bills. H.R. 856, as approved by the House, included an English language provision, along with the expectation (“it is anticipated”) that English would be the “official language of the federal government in Puerto Rico” to the extent required by law throughout the United States. Also, like H.R. 3024, the bill called for additional referenda to be held in the event the initial referendum proved inconclusive. The difference, however, was that the referenda would be held at least once every 10 years (unlike the quadrennial schedule in H.R. 3024) if neither statehood nor separate sovereignty received a majority of the votes. Also, the descriptions of the status options were altered in H.R. 856 to reflect suggestions from political leaders in Puerto Rico.

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<sup>150</sup> Information summarized from H.Rept. 104-713, Part 1, and “Puerto Rico Status,” *Congressional Quarterly Almanac* (Washington: 1996), vol. LII, pp. 3-8.

*Issues of Debate on H.R. 856.* As in previous debates, disagreement over the definitions of the status options dominated. Advocates of H.R. 856 perceived the bill would establish a fair process to enable Puerto Ricans to select a status option. Others disagreed, however, with some arguing that the legislation biased the referendum process toward statehood. Members of the PDP disagreed with the commonwealth description in the bill. Critics argued that, under the legislation, a vote in favor of statehood would be the catalyst for congressional action, whereas a majority vote for continuing commonwealth status would require additional future referenda “until you get it right.”<sup>151</sup> It was also argued that the definition of “commonwealth” in the legislation was anathema to commonwealth supporters, leaving them only one option—to boycott the referendum. One Member of Congress contended that the bill:

[would] deny U.S. citizenship to the children of Puerto Ricans if commonwealth is chosen ... threatens the Puerto Rican people with the loss of federal benefits if they reject statehood ... denies Puerto Ricans on the mainland in the United States the right to participate in this vital process ... neglects our distinct Puerto Rican history as a people and a nation ... abandons the idea of democracy and embraces the imposition of the will of the few on the hopes and dreams of the many.<sup>152</sup>

During the 10-hour debate on the floor of the House on March 4, 1998, some of the same issues discussed in previous years were raised again. Some argued that this bill, like H.R. 3024 from the 104<sup>th</sup> Congress, was biased toward the statehood position. Opponents also argued that it included unconstitutional provisions, established an expedited process that did not allow for sufficient consideration, and did not adequately address the citizenship issue. Some of the reasons stated for Senate inaction included the dearth of backing from commonwealth supporters, and concern on the part of the Republican leadership that statehood would result in Democratic gains in Congress. The 105<sup>th</sup> Congress, like those before it, ended without resolution of the matter.

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<sup>151</sup> Rep. Roger Wicker, remarks in the House, *Congressional Record*, daily edition, vol. 144, March 4, 1998, p. H768.

<sup>152</sup> Rep. Luis Gutierrez, remarks in the House, *Congressional Record*, daily edition, vol. 143, September 24, 1997, p. H 7738.